SENATE **No. 1239**

The Commonwealth of Massachusetts

LEGISLATIVE RESEARCH COUNCIL REPORT

RELATIVE TO

HIGHWAY BEAUTIFICATION AND ABANDONED VEHICLES

For Summary, See Text In Bold Face Type

MARCH 29, 1967

The Commonwealth of Massachusetts

ORDER AUTHORIZING STUDY

(House, Order No. 3950 of 1966)

Ordered, That the Legislative Research Council be directed to include within the scope of its investigation as required by current house document numbered 3921 the study of the implementation of the Federal Highway Beautification Act of 1965 by the commonwealth, the abandonment of automotive vehicles on public ways and private property, and the regulation and control of automotive salvage yards and dumps. Said council shall report the results of its study and fact-finding by filing the same with the Clerk of the Senate on or before the last Wednesday of January, nineteen hundred and sixty-seven.

Adopted:

By the House, August 9, 1966

By the Senate, in concurrence, August 10, 1966

(Senate, No. 1004 of 1967)

Ordered, That the time be extended to the last Wednesday of March of the current year, within which the Legislative Research Council shall file the results of: (a) its study relative to state laws and practices with respect to the protection of migratory workers and their accompanying families, under an unnumbered order adopted by the Senate on August 3, 1966 and by the House of Representatives in concurrence on August 8, 1966; (b) *its study relative to the implementation of the Federal Highway Beautification Act of 1965, the abandonment of automotive vehicles on public ways and private property, and the regulation and control of automotive salvage yards and dumps, under an order adopted by the House of Representatives on August 9, 1966 and by the Senate in concurrence on August 10, 1966 (See House, No. 3950 of 1966)*; and (c) its study relative to a proposed legislative amendment to the State Constitution relative to empowering the General Court to impose and levy a graduated income tax which may be determined as a percentage of the taxpayer's federal income tax liability (See House, No. 1909 of 1966, as amended), under an unnumbered order adopted by the Senate on August 31, 1966 and by the House of Representatives in concurrence on that same day.

Adopted:

By the Senate, January 19, 1967

By the House of Representatives, in concurrence, January 23, 1967

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LETTER OF TRANSMITTAL TO THE SENATE AND HOUSE OF REPRESENTATIVES

To the Honorable Senate and House of Representatives:

GENTLEMEN: The Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau on the subjects of state implementation of the Federal Highway Beautification Act of 1965, regulating automobile scrap yards, and disposal of abandoned motor vehicles.

This report is based on House Order, No. 3950 of 1966, and as usual is confined to statistical research and fact-finding. It does not necessarily reflect the opinions of the undersigned.

Respectfully submitted,

MEMBERS OF THE LEGISLATIVE
RESEARCH COUNCIL
SEN. JOSEPH D. WARD of Worcester
Chairman
REP. JOSEPH B. WALSH of Boston
Vice Chairman
SEN. ANDREA F. NUCIFORO of Berkshire
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REP. HARRISON CHADWICK
of Winchester

The Commonwealth of Massachusetts

LETTER OF TRANSMITTAL TO THE LEGISLATIVE RESEARCH COUNCIL

To the Members of the Legislative Research Council:

GENTLEMEN: — The joint order, House, No. 3950 of 1966 directed the Legislative Research Council to study and report on (a) House, No. 3921 of 1966, an order directing a study of disposition of vehicles abandoned on state property, (b) implementation of the Federal Highway Beautification Act of 1965, (c) abandonment of automotive vehicles on public and private property, and (d) control of automotive salvage yards and dumps.

The Legislative Research Bureau submits herewith its report on the foregoing subject matter. Because hearings are scheduled to open soon in Washington, D. C., on possible revision of the Highway Beautification Act, much of the material discussed in this report may consequently be subject to modification should substantial changes in the law occur as some authorities predict.

The scope and content of this report are limited by the policy which restricts Bureau output to factual information, without recommendations.

The preparation of this report was the primary responsibility of Robert D. Webb of the Bureau staff.

Respectfully submitted,

DANIEL M. O'SULLIVAN,
Director, Legislative Research Bureau

The Commonwealth of Massachusetts

HIGHWAY BEAUTIFICATION AND ABANDONED VEHICLES

SUMMARY OF REPORT

INTRODUCTION

The General Court directed the Legislative Research Council to study and report on four specific matters related to roadside beauty: (1) abandonment of automotive vehicles on public and private property; (2) disposal of vehicles abandoned on State property; (3) regulation and control of automotive salvage yards and dumps, and (4) State implementation of the Federal Highway Beautification Act of 1965.

All four matters are interrelated although each is a separate problem in itself. The Federal Highway Beautification Act is concerned with elimination of roadside blight and authorizes a vast scenic enhancement spending program. To that end it provides for control of outdoor advertising and junkyards along certain federal-aid highways, to be financed by a federal-state sharing of costs on a 75%-25% basis, and a wholly federal-financed program of landscaping and roadside development applicable to all federal-aid highways.

The problem of abandoned vehicles is related in part to the scrap metal cycle and fluctuations in the market price of scrap, which in a given period may make the cost of disposal higher than the value of the vehicle.

This report includes a review of (1) the federal law and proposed standards and criteria to be applied in carrying out its provisions; (2) State laws and regulations affected if the State elects to participate in the federal beautification program, (3) the position of the outdoor advertising and automotive salvage and scrap processing industries, (4) cost estimates of the federal program as applied in Massachusetts, (5) loss of federal-aid funds if the Commonwealth rejects the program; and (6) pertinent questions of law that have been raised in implementation of the federal act.

The Federal Highway Beautification Act of 1965

The Highway Beautification Act covers three major areas of concern: control of outdoor advertising; control of junkyards; and scenic development and roadside beautification. Congress asserted that the purpose of the law is "to protect the public investment in . . . (federal-aid) . . . highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." To include states' participation in the federal programs authorized by the law, the Federal Government will reimburse the states that accept its provisions to the extent of 75% of costs incurred in implementing control of outdoor advertising and junkyards. In addition the Federal Government will make available from its General Fund, a sum equal to 3% of the participating State's annual federal-aid allocation for highway purposes, to be used for scenic enhancement purposes. No state matching funds are required. As a penalty for not participating in the advertising or junkyard control program, a state will annually forfeit 10% of the sum it is apportioned for federal-aid highway construction and maintenance purposes.

Outdoor Advertising. The Federal Act provides that control of outdoor advertising along the Interstate and primary systems is to be achieved by January 1, 1968. Effective control under this law means that (a) on-premise advertising, i.e., advertising activities on the premises on which the sign is located, is *not* subject to federal regulation; (b) outdoor advertising in commercial or industrial areas, zoned or unzoned, *is permitted*, but criteria as to size, spacing and lighting of signs are to be agreed to by the States and the Secretary of Commerce, taking into account customary use; (c) other than the foregoing, billboards are prohibited within 660 feet of the edge of the right-of-way along the Interstate and primary systems.

The exercise of zoning authority remains with the States and local governments. Signs lawfully existing on September 1, 1965 need not be removed until July 1, 1970, regardless of whether or not they are in the controlled area. Just compensation must be paid to the owners of signs which have to be removed and to owners of property on which the signs are located. Compensation costs are to be shared between the Federal Government (75%) and the States (25%). Commercial activities that cater to the motoring public will

be assisted by signs placed at appropriate places on the Interstate system giving specific information, including trade and brand names, of interest to travelers. Such signs must conform to national standards issued by the Secretary of Commerce.

Junkyards. The Federal Act also provides that control of the establishment and maintenance of junkyards along the Interstate and primary systems is to be effective by January 1, 1968. The control area is 1,000 feet from the edge of the right-of-way.

Effective control may be obtained by screening through the use of plantings, fences or other appropriate means. Junkyards which cannot be screened do not have to be removed until July 1, 1970. However, junkyards located in zoned or unzoned industrial areas are *not* subject to control and thus need not be screened or removed. Just compensation is authorized to be paid for the screening of junkyards where needed, and for the removal of such facilities where required. Costs are to be shared by the Federal Government (75%) and the States (25%).

Standards Applied to Advertising and Junkyard Control. The law provides for promulgation of standards, criteria, rules and regulations covering outdoor advertising and junkyards, after public hearings (already held in each State) to gather relevant information. The Secretary of Commerce was directed to report to the Congress on such standards, and on cost estimates to implement the law.

Penalty for Non-compliance. As indicated, federal-aid funds apportioned to any State on or after January 1, 1968, will be reduced by 10% if the State has not provided for effective control of outdoor advertising or junkyards. The Secretary of Commerce may waive the penalty if he determines that it is in the public interest to do so.

Judicial Review. The law provides that before applying the 10% penalty, a State must be given proper notice and a hearing; an adverse decision of the Secretary may be appealed to the Federal District Court whose decision is reviewable by the United States Court of Appeals and the Supreme Court. Pending a final court judgment, the 10% withheld cannot be reapportioned by the Secretary.

Scenic Enhancement. Participating States are allocated an amount equal to 3% of apportioned federal-aid highway funds. These monies are to be used for landscape and roadside development and for scenic preservation and enhancement. Such funds may be used in areas adjacent to and within the right-of-way. *No matching funds are required by the States.* Eminent demain authority will not be used to force a person to sell his dwelling for the acquisition of scenic strips adjacent to the right-of-way.

Developments Since Passage of the Act

Despite the fact that the federal law is now nearly a year and a half old, no final standards for control of outdoor advertising and junkyards have yet been agreed upon. The Secretary of Commerce submitted his proposals in January 1967 as required by the law but formidable opposition has pressured Congress to review the law itself and new hearings are scheduled to be held. Cost estimates for the scenic enhancement program are much higher than initially thought, and this program may have to be modified.

In the interim period since passage of the federal law, many states enacted compliance legislation to protect their federal-aid highway allocations. Others, including Massachusetts, have deferred action until standards are finally agreed upon. Meanwhile, federal-aid funds already appropriated for implementation purposes will lapse on July 1, 1967 in those States that do not comply. Massachusetts stands to lose a substantial portion of the $1.14 million of federal money appropriated for landscaping and scenic enhancement purposes because the Legislature has not acted on a proposal to authorize acquisition of property for scenic purposes. (House, No. 120 of 1967 favorably reported by the Joint Committee on Highways and Motor Vehicles and now pending before the House Committee on Ways and Means).

Estimated Cost of Implementing the Program in Massachusetts

According to estimates prepared by the Massachusetts Department of Public Works, the cost of implementing the beautification program in Massachusetts will be at least $27.3 million and possibly $49.1 million. The total sum will depend on whether the scenic enhancement program is limited to only "top quality" projects ($14

million) or would include all desirable and feasible projects (another $22 million). Advertising control costs are estimated at $11.4 million and junkyard control costs at $1.9 million. As indicated previously, the Commonwealth would not have or bear any part of the scenic enhancement costs.

Massachusetts Experience with Advertising Control

Article 50 of the Amendments to the Massachusetts Constitution was ratified in 1918 and provides that outdoor advertising may be regulated by law. The State subsequently enacted regulatory statutes giving such authority first to the Department of Public Works, and later to an Outdoor Advertising Board established in 1946. Outdoor advertising companies challenged the regulatory code of the Department of Public Works and in a leading case, *General Outdoor Advertising Co. v. Department of Public Works*, the Massachusetts Supreme Judicial Court upheld the code. References to important dicta and holdings of the Court in that case are included in this area.

Present State regulations of the Outdoor Advertising Board are far more liberal than the proposed federal standards. In particular, State regulations defining a business area, prescribing size of signs and setback requirements, and other provisions that give the agency discretionary authority to permit variances, are considerably less restrictive than draft standards proposed by the Secretary of Commerce. The flexibility and potential exceptions to the State rules are much preferred by the outdoor advertising interests who vigorously support their adoption as customary use in this Commonwealth.

To implement advertising control provisions of the federal law and thus preclude the loss of federal-aid funds, the State Department of Public Works filed House, No. 123 of 1967. The proposal was heard by the Committee on Mercantile Affairs which subsequently recommended that it be studied by the Special Commission on Powers and Duties of the Outdoor Advertising Board (House Order 4392, now pending in the Rules Committees).

Views of the Outdoor Advertising Industry

The outdoor advertising industry has vehemently attacked the standards proposed to control outdoor advertising devices, as unreasonable, arbitrary, and inconsistent with customary use in Massa-

chusetts. It argues that although Congress intended that criteria to control size, spacing and lighting of outdoor advertising, be consistent with customary use in each State, this factor was completely ignored in the drafting of standards. To exclude this factor, they contend, will cause a severe, if not disastrous, impact on the industry in Massachusetts. Practices of the industry are geared to national coverage and billboard "showings" would be made wholly ineffective by proposed standards that ignore vital spacing arrangements. As a result, spokesmen for Massachusetts advertising companies claim that up to 90% of their sign locations would be lost if current proposed standards are adopted. The industry's argument that customary use should govern the adoption of standards is based on legislative intent as evidenced in committee hearings and floor debate on the beautification bill. The industry calls attention to the "Tuten Amendment" which restricts control criteria to those "consistent with customary use." If customary use is to be the key to adoption of standards, the industry insists that current rules and regulations of the Massachusetts Outdoor Advertising Board have long made clear what customary use is in this Commonwealth.

Spokesmen for the industry in Massachusetts differ with their national trade association relative to the ultimate authority to decide on the vital issue of proper land use, an issue that involves the right to erect billboards in commercial areas. The national policy of the industry favors local home rule powers; the State association strongly opposes such delegation of power, citing the successful State regulation over a 40-year period.

Cost of Advertising Control and Compensation for Takings

The State Department of Public Works has estimated that it will cost nearly $11.4 million to control outdor advertising in Massachusetts under the provisions of the federal law. This figure includes just compensation for removal of signs and related project costs such as engineering and contingencies.

The Attorney General of the United States has indicated that States must make just compensation payments for takings to carry out the law even though they can apply effective control through exercise of their police powers. At the close of 1966, twelve states had enacted control statutes.

Junkyard Control

The control area for junkyards differs from outdoor advertising in that it extends 1,000 feet from the right-of-way as opposed to 660 feet for billboards. A second difference is that billboards are permitted in unzoned industrial and commercial areas, subject to a state-federal agreement on a definition of such area, while junkyards will be allowed in unzoned industrial areas (but not commercial) with such area to be determined by the State subject to federal approval. Junkyards can remain in zoned industrial areas without screening but must be effectively screened elsewhere or be removed. The State will pay for screening costs and the Federal Government will reimburse the State 75% of such cost.

The Massachusetts Department of Public Works has filed House, No. 119 of 1967 to implement the junkyard control section of the federal law. The bill is patterned closely on a Rhode Island junkyard statute. At the end of 1966, sixteen states already had enacted laws implementing the federal act in this respect.

Estimated Costs of Junkyard Control

To implement the federal law in Massachusetts will cost nearly $1.9 million. This sum includes (a) just compensation to owners of junkyards for required relocation, removal or disposal of such facilities, and (b) the expense of screening junkyards and related project costs. Four-fifths of this total would be for the removal of facilities along the Interstate system.

Junkyard Owners' Views

Views of Massachusetts junkyard owners have been voiced through a state association of auto and truck wreckers. (About 400 automotive junk facilities operate in Massachusetts.) That group opposes proposed standards that would arbitrarily prohibit operation of a junkyard in an area that is predominantly used for light industry. The Association also believes that owners of junkyards should be given the right to develop their own screening program, subject to State approval rather than have a screening plan forced upon them. With reference to yards that must be removed, the Association urges legislation that would assure relocation of an established yard within the same general area. Such legislation should include, it is

argued, State eminent domain power to effect the relocation and the State power to originate a junkyard license.

Abandoned Vehicles

Disposal of junk motor vehicles is a national problem that has its origins in a depressed market for scrap steel. New steelmaking processes are using less automotive scrap; consequently the economic law of supply and demand has forced junkyard owners to accumulate more and more junked automobiles. With scrap prices down, and with wreckers accepting only cars with salvageable parts for resale, many owners of "junkers" are simply abandoning them where it is most convenient,—on a vacant lot or a street, inasmuch as the cost of towing them to a scrap processing yard may exceed the scrap value of the vehicle.

The Massachusetts General Laws have been amended recently to control this problem. One statute provides fines at from $200 to $500 for anyone who abandons a motor vehicle on public or private property. A second law provides for lawful removal and disposal of abandoned vehicles that have no substantial value. Finally, a statute passed last year provides fines of from $50 to $300 for unlawful removal of parts or accessories from abandoned vehicles.

Removal of abandoned vehicles under statutory authority has had mixed success. The prevailing price of scrap has an influence. When the market is up fewer junkers are abandoned and scavengers are apt to quickly descend upon and remove the junkers that do appear. If the market is down, abandoned junkers are more prevalent and the task of removal then falls upon local police and public works departments to locate, identify, tag, and remove such vehicles. Vehicles are usually classified as junk if their value is less than $100; these are collected and sold at auction, usually to licensed junk dealers. Administrative costs of this program usually exceed revenues from auction sales. In comparison to other large cities such as New York, Chicago and Washington, the problem of abandoned vehicles in Boston is not acute. Disposal procedures are similar in these cities.

The Council of State Governments has examined many state statutes on this subject and on the basis of that experience, it has developed a model law on removal and disposal of abandoned vehi-

cles that includes the most successful features of such laws. The model law is reprinted as Appendix C to this report.

Landscaping and Scenic Enhancement

The scenic enhancement provisions of the federal act are of major importance in that the largest portion of authorized federal funds will be for this purpose. Not only does this section promote a vast program of roadside beautification, it will be wholly financed by the Federal Government. In the cost estimate report of the Massachusetts Department of Public Works, it was indicated that top quality scenic projects would consume $14 million and if all desirable and feasible programs are undertaken, another $22 million could be spent.

Among the more important objectives of the program are the following: (1) emphasizing beauty by giving more attention during the location and design stage of road construction to aesthetic considerations; (b) acquiring scenic strips of land or easements, (c) landscaping, and (d) providing more rest areas and scenic turnouts. A sum equal to three percent of a State's annual federal-aid highway appropriation will be made available for such purposes.

The Massachusetts Department of Public Works presently does not have authority to acquire land outside the highway right-of-way for purposes of scenic beautification. The Department has filed House, No. 120 of 1967 which would give it that authority and other powers to implement the scenic enhancement program. If the bill is not acted upon soon, the State will forfeit up to a half-million dollars, possibly more, in federal funds already appropriated for this purpose, but unused for lack of authority to acquire scenic strips. The federal money will lapse on July first of this year.

The report discusses various forms of scenic acquisitions that could be made and reviews legal questions related to the program.

Twenty-one states had existing authority to acquire scenic easements for preservation of natural beauty and others added such authority last year. No controversy has arisen over this program and the only real obstacles that appear to lie in the path of implementation are the cost features and the requisite legal authority under State law to acquire necessary acquisitions.

The Commonwealth of Massachusetts

HIGHWAY BEAUTIFICATION AND ABANDONED VEHICLES

CHAPTER I. INTRODUCTION

Origin and Subject of Study

As the above title indicates, this report is concerned with two main topics: highway beautification and abandoned motor vehicles. These are the subjects of study directed by House Order, No. 3950 of 1966, printed on page two, and the basis of this report. The joint order called for the Legislative Research Council to study four specific matters: (1) the subject matter of House Order, No. 3921 of 1966, directing a study of disposition of vehicles abandoned on state property, (2) state implementation of the Federal Highway Beautification Act of 1965, (3) abandonment of automotive vehicles on public ways and private property, and (4) regulation and control of automotive salvage yards and dumps.

The Highway Beautification Act is concerned with three areas of control: (1) automotive junkyards which include salvage operations and scrap processing facilities, (2) landscaping and scenic enhancement along *all* federal-aid highway systems, and (3) outdoor advertising. The federal controls aimed at junkyards and advertising apply only to Interstate and primary highway systems. The problem of abandoned vehicles results from the depressed market for automobile scrap, which in turn affects the automotive salvage and dump operators.

The subject of this study is not a mere academic exercise; failure of the State to implement provisions of the federal act can mean a loss of several millions of dollars of highway apportionments each year beginning in 1968. And the expense of removing abandoned vehicles is increasing each year to the dismay of municipal authorities who must budget increasing sums to cover disposal costs.

Scope of Study

The directive to study the implementation of the Federal High-

way Beautification Act requires an examination of three broad and complicated subject areas.

Control of outdoor advertising, the subject matter of Title I of the federal act, involves a review of constitutional and statutory powers of government, administrative rules and regulations, practices and customs of the industry, and the financial consequences to the industry and to the highway program.

Control of automobile junkyards, the subject matter of Title II of the federal act, involves a review of state and local law regulating junkyards, junk automobile dealers and scrap metal dealers; a review of the scrap metal industry and the scrap cycle, and the relationship of abandoned junk automobiles. Since the subjects of disposition of abandoned motor vehicles and regulation of the automotive salvage and scrapyards, required by separate directives of the study order, are tied in with junkyard regulation, these are discussed as one problem.

Scenic enhancement, part of Title III of the federal act, requires a review of federal and state law governing roadside beautification, acquisition of rights in land, highway aesthetics, design and maintenance, the price of beauty and various land acquisition concepts.

Relevancy of Material

Although 17 months have elapsed since passage of the Federal Highway Beautification Act of 1965, no final standards have as yet been agreed upon that will serve as the basis of state implementing legislation for control of outdoor advertising and junkyards. In January of this year the Secretary of Commerce, in compliance with the law, submitted to Congress proposed standards for implementing the law based on early draft criteria that were discussed by interested parties at a series of public hearings in 1966. Despite modifications to pacify various critics of the draft standards, the proposed final standards appear to be unacceptable at this time. In addition, preliminary cost estimates are higher than anticipated. The Congressional Sub-Committee on Roads has therefore scheduled new hearings on revision of the 1965 act for early April, 1967.

It is impossible to predict the outcome of the new hearings or their effect on the 1965 act. It is possible, of course, that the act

may be revised and, if so, some of the material in this report will no longer be timely or relevant. Most of the material herein is based on the draft standards prepared for discussion at the 1966 hearings and subsequent modifications in July, 1966 and January, 1967. All legislative bills discussed herein were tailored to meet preliminary standards. A substantial change in the law or the standards promulgated thereunder will naturally affect the views of all parties affected.

The Legislative Research Bureau is indebted to many agencies, groups and individuals for their willing cooperation and help in providing material, guidance and suggestions for this report. We extend our particular thanks to the Massachusetts Department of Public Works, the United States Bureau of Public Roads, the Massachusetts Outdoor Advertising Association, the Massachusetts Auto and Truck Wreckers Association, the Institute of Scrap Iron and Steel, the Massachusetts Petroleum Council, the Outdoor Advertising Association of America, the Highway Research Board, and the many state legislative research agencies that rendered assistance.

CHAPTER II.

THE FEDERAL HIGHWAY BEAUTIFICATION ACT OF 1965

Background of the Law

At the call of the President of the United States, a two-day White House Conference on Natural Beauty was convened on May 24, 1965. Some 800 delegates and many observers from all parts of the nation participated. Among conference activities were panel meetings on automobile junkyards, roadside control, scenic parkways and landscape action. Recommendations of the Conference were submitted to the President at the conclusion of the Conference. On the day following Conference adjournment, the President sent to the Congress proposed legislation to carry out his beautification program. In his letter of transmittal, the President observed that highway beautification is a means of serving the needs of the American people. The national economy and the roads that serve it, he stated, are not ends in themselves. "They are meant to serve the real needs of the people of this country. And those needs include the opportunity to touch nature and see

beauty, as well as rising income and swifter travel. Therefore, we must make sure that the massive resources we now devote to roads also serve to improve and broaden the quality of American life."

In July, 1965, public hearings were held on four highway beautification proposals. By the latter part of September, the Senate Committee on Public Works recommended enactment of S.2084, a modified version of the President's proposal. The measure came under scathing criticism by the committee minority who branded it unworkable, unwise and unfair. Nevertheless the Congress enacted the bill, which became Public Law 89-285 on October 22, 1965, amending Title 23 of the United States Code. The entire text of the law is reprinted as Appendix A to this report.

Scope of the Law

The Highway beautification Act is concerned with scenic development and road beautification of the federal-aid highway systems. To that end, its provisions establish regulations controlling (a) outdoor advertising, (b) junkyards, and (c) landscaping and roadside development. The express aim of the Congress in adopting the Act is "to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

Both inducements and penalties are applied to obtain States' participation in the programs. A 75% federal/25% state sharing of costs is provided in the advertising and junkyard sections of the Act. In addition, each of those sections of the Act provides a penalty of 10% reduction in total federal-aid funds normally allocated to the States which refuse to accept either program. Although it has been argued that the penalties of each section are cumulative, that is, a total penalty of 20% if each program is rejected, the General Counsel of the United States Bureau of Public Roads has stated that from the legislative history of the Act, it is clear that only a 10% reduction was intended.[1] In Title 3, the scenic enhancement provision, no matching funds are required and each State accepting this program will receive an amount

[1] Dowell H. Anders, General Counsel, U. S. Bureau of Public Roads, in letter to the Legislative Research Bureau and accompanying legislative history, March 22, 1967

equal to 3% of its federal-aid highway fund allocation. The landscaping and roadside development program, which includes rest and recreation areas and sanitary facilities, extends to secondary highway systems, as well as the Interstate and primary systems. No penalties are imposed upon States which decline to participate in the program, which is wholly financed through federal funds.

All three areas of control present formidable challenges in reconciling differences between the public interest and private interests, and in promoting cooperative action between and among all interested parties. Effective control can be achieved only if the States comply with standards established by the Secretary of Commerce.[1] The Act directed the Secretary to hold public hearings for the purpose of gathering all relevant information and data necessary to develop standards, criteria, rules and regulations, and to report results to the Congress by January 10, 1967. In addition, the Secretary was to furnish the Congress with a report detailing cost estimates and the economic impact of the programs on affected parties, and alternate or improved methods of accomplishing the objectives of the Act. Hearings were held in Boston in March, 1966 and cost estimates have been prepared by the Massachusetts Department of Public Works for the United States Bureau of Public Roads.

The most controversial subject is the regulation of outdoor advertising, or more simply, billboard control. Junkyard control is also generating a sharp exchange of views but it is hoped that satisfactory compromises in this area of regulation can be achieved. Scenic enhancement provisions do not appear to have created any bitter controversy but this program will probably be modified in view of initial cost estimates. In the following three chapters, these subjects are discussed separately in some detail; the principal features of the law are set out below.

Principal Features of the Law

Outdoor Advertising Control

To avoid the penalty imposed by the law, States must make

[1] The 1966 Federal Highway Safety Act has vested responsibility for the road beautification program in the newly established Department of Transportation. However, the Secretary of Commerce is still required to prepare the necessary standards.

provisions by January 1, 1968 for control of outdoor advertising within 660 ft. of the edge of the right-of-way of all Interstate and federal-aid primary highways. Not all signs and billboards will be excluded. Advertising devices will be allowed in zoned and unzoned commercial and industrial areas, but subject to size, spacing and lighting standards set by federal authorities. In addition, so-called informational signs that indicate availability of nearby motorists' services will be allowed in the control area, as well as signs informing the public of scenic wonders, historic sites and recreational facilities, all subject to regulations. Not subject to the Act's provisions are those signs that are located on the owner's property for the purpose of advertising its sale or lease, or for advertising an activity conducted thereon; the latter are referred to as "on-premise" signs.

Although States must act to provide outdoor advertising control by January 1, 1968, signs that were legally existing on September 1, 1965 may be permitted to remain until July 1, 1970 to allow orderly transition. Other signs that do not conform to the regulations may be permitted to remain up to five years from the date that they become non-conforming, after which they must be removed.

Under certain conditions, sign owners, and owners of property on which signs are placed, may be compensated by the State if they are forced to remove the signs. Seventy-five percent of the compensation costs will be reimbursed by the Federal Government.

Junkyard Control

Minimum standards will govern the operation of junkyards, scrap metal processing facilities, automobile wreckers, garbage dumps and the like, that are located within 1,000 ft. of the edge of the right-of-way along Interstate and federal-aid primary systems. Effective control may be achieved either by screening the facility from view, using fencing or plantings, or by removing those facilities that cannot be effectively screened.

Junkyards in existence on October 22, 1965 that cannot be screened may be allowed to remain until July 1, 1970 before removal.

However, junkyards within 1,000 ft., and visible from the main traveled way of Interstate and primary system highways that are

located within a zoned or unzoned industrial area do not have to be screened or removed. Like the advertising provisions of the act, under certain conditions States may compensate the junkyard owners for screening or removal and the Federal Government will reimburse the State for 75% of such costs.

Scenic Enhancement

The protection and enhancement of natural beauty along our highways is a major concern of the Act. For this purpose, Highway Trust Fund monies may be used for landscaping, roadside development, and the building of rest and recreation areas *within* the right-of-way. These funds are considered part of the expense of the highway construction program and States must match the Federal Government on a 50-50 basis in some cases, and on a 10%-90% basis with relation to the Interstate roads.

In addition, federal general fund monies equal to 3% of each State's federal-aid apportionment are made available for use by the States without any matching requirement, to preserve, restore and enhance scenic beauty both within and outside the right-of-way. Additional land acquisition to achieve this goal is included in this program. All federal-aid highways come within the scope of this provision. The object is to protect natural beauty in the corridor through which the highway passes. Such projects are given the following priority: (1) those that will preserve existing scenic beauty, (2) those that will permit the improvement, restoration or enhancement of adjoining strips of land, and (3) those that will make available supplementary areas for facilities that are lacking on the right-of-way which can be provided soon with available funds.

Public hearings to gather information relevant to establishing standards, criteria, rules and regulations to effectuate the law, required by the Act, were conducted in all States and recommended standards were submitted to the Congress in January, 1967.

Initial Impact of the Law

While hearings were being conducted on the draft standards to determine their feasibility, the state and federal agencies responsible for administrating the law were engaged in the task of orient-

ing staff personnel and reviewing statutes to determine what changes were necessary to avoid conflicts of laws. A new division was established within the Federal Bureau of Public Roads with responsibility over highway beautification projects while existing divisions were strengthened to handle critical questions related to legal, fiscal and design problems. Efforts were begun to staff regional offices of the Bureau with a qualified landscape engineer or architect. Training sessions were held for selected state and federal officials who will administer the program. Certain non-controversial activities that did not require airing at the public hearings were launched in order of priorities: acquiring an interest in scenic land strips adjacent to the highway systems involved; improving landscaping and developing these strips; and landscaping and developing the right-of-way on all federal-aid systems. Where state law does not permit a highway agency to acquire land outside the right-of-way, legislation was prepared to grant such authority as soon as feasible. While some state highway agencies delay legislative action, the real problem of obligating federal funds during the fiscal year in which they are appropriated cannot be ignored. Unlike Highway Trust Fund monies that may be re-allocated, monies for scenic improvement under s.319 of the Act have to be obligated during fiscal 1967 or they revert to the Federal treasury and are forever lost to the States. Hence the Bureau of Public Roads has been urging state action that will take advantage of funds available.

State highway departments have been adjusting and seeking increased staff to meet the opportunities. An immediate concern of state officials was the added burden to staffs that already are heavily engaged with regular duties. In many States positions that are open are not attracting as many top applicants as would be hoped because of unrealistic salaries.

With many legal questions related to billboard and junkyard control still pending, most funds are expected to go into landscaping of projects now underway. The utilization of future available funds probably will be directed toward urban needs where most objections lie and where results will be seen by more people.

Proposed Standards and Criteria for Control of Outdoor Advertising and Junkyards

The Highway Beautification Act of 1965 called for certain national standards to be promulgated by the Secretary of Commerce, specifically, standards pertaining to outdoor advertising and junkyard control and to directional, official, and informational signs helpful to the traveling public, to be erected on the rights-of-way of the Interstate system.

More specifically, the Act provides that standards and criteria for the size, lighting and spacing of outdoor advertising signs to be permitted in commercial and industrial zones and areas adjacent to the Interstate and primary system of highways are to be determined by agreement between the several States and the Secretary of Commerce. Also to be determined by similar agreement is the definition or delineation of unzoned commercial or industrial areas, where outdoor advertising signs may be permitted. In addition, the definition or delineation of unzoned industrial areas, where junkyards and similar facilities may be operated, is to be determined by the several States, subject to approval by the Secretary.

The final standards submitted by the Secretary to Congress last January comprise nine typewritten pages that reflect (a) information obtained during 52 public hearings held during the spring of 1966, (b) statistical data developed during an inventory of signs and junkyards among the States, and (c) other information considered germane.

The standards are printed as Appendix B to this report. Of particular interest are (1) the definition and comments on an unzoned commercial or industrial area with regard to advertising displays, (2)size of signs, (3) spacing of signs, and (4) definition of an unzoned industrial area for junkyard control.

Factors Influencing Timing of State Implementation Legislation.

Immediate State Action Urged

Several States have bills pending before their legislatures concerning compliance with federal highway beautification standards. Many States have considered suspending action on these proposals

until Congress has acted upon final highway beautification standards recently submitted by the Secretary of Commerce.

According to a federal official in the Department of Commerce,[1] to delay action on compliance legislation would be a mistake if current action is at all possible. It was pointed out that penalty provisions of the federal act do not go into effect until January 1, 1968 and that the Secretary of Commerce, whenever he determines it to be in the public interest, may suspend application of the penalty provisions. Thus, penalty provisions would be suspended if there is evidence that a State is making an effort to comply with the federal act. In such circumstances, a specific recommendation that has been offered is that a State Legislature consider a statute authorizing appropriate state officials to negotiate with the Secretary and to enter into agreement as to standards for size, lighting and spacing of signs permitted in zoned and unzoned commercial and industrial areas and for the definition of an unzoned commercial and industrial area. The federal act stipulates that no signs shall be required to be removed before July 1, 1970. Thus, it is argued, ample time is available to consider and review the negotiations and agreement between the Secretary and the State as to propriety insofar as a particular State is concerned.

Holding Action if Situation Warrants

On the other hand, Congressman John C. Kluczynski, Chairman of the House Subcommittee on Roads, with jurisdiction over highway beautification proposals, informed the Governor of each State on March 3, 1967, that no significant preliminary agreement had been reached on acceptable revisions in the proposed regulations and that the prospect of reaching an early accord appeared slim. State Legislatures that must conduct their business within constitutionally prescribed periods thus face the task of enacting compliance legislation without the availability of final federal standards. To meet this problem, Congressman Kluczynski assured the Governors that no penalties would be invoked because of lack of federal standards. The pertinent text of his letter is as follows:

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[1] Acting Under Secretary Bridwell, in communication to West Virginia Authorities in early March, 1967.

> Several of the State legislatures are rapidly approaching the point beyond which it will be impossible for them to consider additional legislation during the current session. Because there are now no final federal standards on which the States may base their actions, the specific purpose of this letter is to assure you that no penalty will be invoked against any State which is unable to take the necessary legislative action to meet the compliance deadline of January 1, 1968, because of the lack of the federal standards.
>
> I have the assurance of the Federal Highway Administrator in this respect, and I offer you my own assurance in my capacity as Chairman of the Subcommittee on Roads. This letter is being sent to each of the Governors of the 50 States. Because the compliance deadline is contained within the statute itself, the Federal Highway Administrator does not feel that he can issue a blanket statement of this nature, but he has assured me that he will be glad to so answer the inquiry of any individual State.

Less than three weeks later, Congressmen Kluczynski and Cramer announced that despite good faith and efforts of all interested parties, no agreement could be reached on acceptable standards. Thus it was decided to schedule hearings on revisions of the Highway Beautification Act in early April, 1967. As indicated in Chapter I, the reopening of hearings on the beautification program may well result in an entirely new approach to implementation of the law.

Lapse of Federal Funds Now Available

Lack of available final standards governing contol of outdoor advertising and junkyards has obviously contributed to deferred action on Massachusetts proposals to implement the advertising and junkyard provisions of the federal act.[1] Controversial points in both areas of control remained to be settled. Failure to enact implementing legislation during the current fiscal year will result in the lapse of federal funds made available for these purposes. The loss will be permanent since these funds cannot be reapportioned for the following fiscal year. Most important, a very substantial loss will occur if the Commonwealth fails to enact legislation that will authorize the Department of Public Works to acquire

[1] The Committee on Mercantile Affairs reported the advertising control bill (House, No. 123 of 1967) in a study resolve for consideration by the Special Commission on the Powers and Duties of the Outdoor Advertising Board (House, No. 4392). This latter measure is now before the Committees on Rules, acting concurrently. The junkyard regulation measure (House, No. 119 of 1967) was reported favorably by the Committee on Highways and Motor Vehicles and is awaiting action by the House Ways and Means Committee.

interests in land for purposes of scenic enhancement. More than $1.1 million of federal funds were appropriated for the scenic enhancement program in Massachusetts. Unfortunately, the Department lacks authority to condemn scenic strips outside the right-of-way and therefore no programming of such projects can be approved by the Federal Bureau of Public Roads until the General Court enacts legislation as proposed in the Department's bill, House, No. 120 of 1967, discussed below.[1]

The following text discusses the appropriations, authorizations and available funds as yet unprogrammed.[2] Some of the unprogrammed money will undoubtedly be used before the fiscal year expires for projects *within* rights-of-way but most of these federal funds are expected to lapse in the absence of timely legislative action to use them.

As of March 15, 1967, a total of $729,707 of federal-aid funds appropriated for beautification purposes were actually available to Massachusetts. Of this sum, only $304,588 had been obligated or approved for definite project work, viz., $2,400 for junkyard control and the balance for landscaping work. There remained $425,119 of federal funds available but not obligated because the State had not yet submitted programmed work for federal approval. In addition, another $344,766 will become available before the fiscal year ends on June 30, 1967, including $16,035 for advertising control, $42,027 for junkyard control, and $286,704 for landscaping. *All unobligated funds will lapse on July 1, 1967* and cannot be reappropriated in the next fiscal year.

A. Funds for Outdoor Advertising Control

Monies Appropriated	$ 64,138
Monies Obligated (authorized) . .	—
Unprogrammed by State	$ 64,138

As of March 31, 1967, $48,103 of appropriated funds were actually available to the State. Another $5,345 will become available on April 1, 1967, and equal sums will be available on May 1, 1967 and June 1, 1967. The $64,138 represents the 75% federal share of total costs of advertising control projects. The State would assume 25% of the cost, or $21,379.

1 Now before the House Ways and Means Committee.

2 Source: U. S. Bureau of Public Roads.

B. Funds for Junkyard Control

Monies Appropriated	$ 168,107
Monies Obligated (authorized) . . .	2,400
Unprogrammed by State	$ 167,707

As of March 31, 1967, $123,680 of appropriated funds were actually available to the State. A total of $14,009 will become available on April 1, 1967, and equal sums will be available on May 1, 1967 and June 1, 1967. The $168,107 represents the 75% federal share of total costs of junkyard control projects, with the State's share set at $56,036.

C. Funds for Landscaping and Scenic Enhancement

Monies Appropriated	$1,146,816
Monies Obligated (authorized) . . .	302,188
Unprogrammed by State	$ 844,628

As of March 31, 1967, $557,924 of appropriated funds were actually available to the State. An amount of $95,568 will become available on April 1, 1967, with equal sums available on May 1, 1967 and June 1, 1967. The Federal Government is assuming all costs of landscaping, hence no State matching funds are required. However, in the case of all three project areas, i.e., advertising control, junkyard control, and landscaping, the State must spend its funds first and then the Federal Government will reimburse the appropriate share.

As indicated above, one reason for delay in using available federal funds is that the Department of Public Works currently lacks authority to acquire property interests *outside* the highway right-of-way for rest areas or scenic overlooks. Therefore, the Department of Public Works has requested this power in House, No. 120 of 1967. This Bill would authorize the Department to acquire by eminent domain, or by purchase or otherwise, land and rights in land within and adjacent to federal aid highways in Massachusetts for the purpose of restoring, preserving and enhancing scenic beauty or, subject to (a) the approval of the Massachusetts Historical Commission, and (b) the availability of federal reimbursement, historic sites adjacent to such highways. Among other of the bill's provisions, the Department would be authorized to construct rest and recreation areas and sanitary and other facilities

within an adjacent to such highways which are reasonably necessary to accommodate the traveling public.

Problems of Implementation

The foregoing discussion of the Highway Beautification Act of 1965 is at best only a general acquaintance with the law and its three main programs. No real understanding of its provisions or appreciation of the problems connected with its implementation can be had without examining in some detail the control areas affected and both immediate and long-range objectives of the act.

In the next few chapters these matters are given specific attention. Regardless of what standards are finally agreed upon they must be applied to this same economic and social setting where presently proposed standards appear to have run aground. As will be seen the problems of implementation are manifold, the solutions to most of them are as yet undevised. The situation may well call for a fresh approach if the ultimate goal is to be attained.

Cost Estimates of Implementing the Highway Beautification Act in Massachusetts

The Highway Beautification Act (S.302) required the respective state highway authorities to make a detailed estimate of the cost of carrying out the provisions of the law, and a comprehensive study of the economic impact of such programs on those affected. Cost estimates have been prepared by the Massachusetts Department of Public Works and were submitted to the Federal Highway Administrator on October 1, 1966, in a detailed tabular report.[1] The Department presented cost figures separately related to (1) the Interstate System, (2) the primary system, and (3) selected routes of the secondary system. Tabulations were separately compiled for estimated costs of (1) controlling outdoor advertising signs, (2) screening or removing junkyards, and (3) landscaping and scenic enhancement, including separate estimates for (a) "top quality" projects and (b) all desirable and feasible projects.

[1] Estimate of the cost of carrying out the Provisions of the Highway Beautification Act of 1965 in the Commonwealth of Massachusetts, October, 1966. Mass. Dept. of Public Works, Boston, 56pp., processed. Hereafter referred to as *Cost Estimate.*

The total minimum cost of carrying out the provisions of the Highway Beautification Act in Massachusetts is estimated to be $49,091,000.[1] Of this total, $11,392,000 is for outdoor advertising control, $1,879,000 for junkyard control, and $35,820,000 for "desirable and feasible" landscaping and scenic enhancement. If landscaping and scenic enhancement work is limited only to "top quality" projects, the cost would be $14,000,000 for landscaping and scenic enhancement, and the total estimated cost would be $27,271,000.

TABLE 1. TOTAL ESTIMATED COSTS OF IMPLEMENTING THE HIGHWAY BEAUTIFICATION PROGRAM IN MASSACHUSETTS[1]
(in thousands of dollars)

	Interstate System	*Primary System*	*Secondary System*	*Total*
Outdoor Advertising Control	$ 973	$10,419		$11,392
Junkyard Control				
Relocation or removal	1,574	65		1,639
Screening	38	202		240
Sub Total	$ 1,612	$ 267		$ 1,879
Landscaping and Scenic Enhancement (Desirable and Feasable)[2]				
Acquisition and Landscaping	535	2,186	$ 395	3,116
Roadside Development	7,945	10,440	683	19,068
Rest and Recreation Areas	3,991	8,799	846	13,636
Sub Total	$12,471	$21,425	$1,924	$35,820
(Top Quality Only)				
Acquisition and Landscaping	214	1,134	153	1,501
Roadside Development	3,821	2,700	—	6,521
Rest and Recreation Areas	2,397	3,326	255	5,978
Sub Total	$ 6,432	$ 7,160	$ 408	$14,000
GRAND TOTAL				
Limited to Top Quality Projects	$ 9,017	$17,846	$ 408	$27,271
All Desirable and Feasible Projects	$15,056	$32,111	$1,924	$49,091

1 Source: Based on DPW, *Cost Estimates,* Table SS-1.
2 Desirable and Feasible Project Totals include Top Quality Project Totals.

Advertising control costs cover compensation for removal of outdoor advertising signs, displays and devices and related project costs. No bonus payments are included since Massachusetts is in-

1 Table SS-1, revised, p. 5, *Cost Estimate.*

eligible to claim any bonus payment. Funds for junkyard control include (a) just compensation for the relocation, removal or disposal of junkyards and related project cots, and (b) screening of junkyards and related project costs. Landscaping and scenic enhancement expenditures provided for (a) acquisition of interests in proposed scenic strips off the right-of-way and for their improvement and development, (b) landscaping and roadside development of rights-of-way, excluding rest and recreation areas and scenic overlooks, and (c) rest and recreation areas on the right-of-way including landscaping and roadside development.

It should be borne in mind that the major part of the estimated totals is for landscaping and scenic enhancement, a program to be wholly financed with federal funds. The remaining costs for control of outdoor advertising and junkyards are subject to 75% federal reimbursement.

Table 1 summarizes the more detailed data compiled by the Department of Public Works in its 56 page tabulation of estimated costs.

CHAPTER III. CONTROL OF OUTDOOR ADVERTISING

Introduction

Unquestionably the most controversial aspect of the Highway Beautification Act is the restrictive set of statutory and administrative regulations designed to control outdoor advertising along the federal Interstate and primary highway systems.

Massachusetts is not unfamiliar with the nature of the issue. Dissatisfaction with an industry that exercised no self-restraint led to adoption of a constitutional amendment to regulate outdoor advertising on property within public view. When subsequent regulations appeared to the industry to be too restrictive, the industry challenged them in the courts on grounds of alleged unconstitutionality. The Massachusetts Supreme Judicial Court affirmed the validity of the regulation and the views expressed by the Court in that decision cannot be ignored in light of the issues that are once again being raised.

One important change has taken place since the major court decision of some 30 years ago. Regulatory authority over the out-

door advertising industry was then vested in the Department of Public Works and it was that agency's regulatory code that was upheld by the Court. In 1946, however, an Outdoor Advertising Board was created to administer the law. Its powers and duties outlined in this chapter, will most likely be treated in more detail by a current special commission whose purpose is to study that subject. It can be stated, however, that from the rules and regulations it has promulgated, and appellate decisions it has made, that the board's concept of adequate outdoor advertising control is considerably less restrictive than the approach to control expressed in the proposed federal standards.

The difference is an important one. While the Department of Public Works filed its proposal to implement the outdoor advertising control provision of the federal act (House, No. 123 of 1967) other interests filed a proposal giving the Outdoor Advertising Board jurisdiction over the subject (House, No. 1465 of 1967).

No matter what develops in that arena, the main contest is being waged in Washington where it will be decided. Standards ultimately agreed upon there will be the only choice open to States unwilling to give up the millions of federal-aid dollars involved.

The advertising industry, as would be expected, is the most severe critic of the proposed standards and its reasons are set out below. Their objections, while sometimes inconsistent, are nonetheless very formidable. The extent of injury that it predicts is as drastic as it feared during its previous struggle with Massachusetts controls. The difference this time is that the regulatory agency it lives under in Massachusetts is of a different character than that of the earier period. This time the industry finds itself defending state regulations as reasonable and workable, indeed using them as a defensive weapon against the thrust of the federal proposals. These events and factors are further developed in the following sections.

Federal Legislation

The federal regulation of outdoor advertising first occurred with the passage of the Federal Aid Highway Act of 1958. That law established a national policy for lands adjacent to the national system of Interstate and defense highways. Under the 1958 law,

any State that signed an agreement with the Secretary of Commerce establishing control within 660 feet of the nearest edge of the right-of-way in accordance with standards promulgated by the Secretary received a bonus of ½ of 1% of the construction cost of an Interstate project.[1] Despite the bonus offer and several extensions of time, only 25 States, with a total of 18,000 miles[2] of Interstate highways entered into agreements with the Secretary to establish and enforce billboard controls. The offer expired June 30, 1965.

The Highway Beautification Act of 1965 is much broader in concept and content than the earlier federal law. Whereas the so-called bonus act was limited to the Interstate system of highways, the new law, with respect to advertising and junkyard control, extends to the federal-aid primary system as well which, combined with the Interstate system, covers 268,000 miles of highway.[3] In place of the bonus arrangement in the 1958 law, the new act withholds funds if federal conditions are not met.

Although each law provides that actual control of advertising (and junkyards under the new law) remains a State responsibility, the provision in the 1965 Act relative to minimum standards set by the Secretary of Commerce as guidelines for State established controls makes the States subservient if they wish to take the most advantage of federal funds and avoid penalties of non-participation. The States can, if they choose, enact and enforce more stringent controls than those required by federal law.

Constitutional Authority to Regulate Outdoor Advertising

Power to regulate and restrict advertising in public ways and upon private property within public view was conferred upon the Legislature by Article 50 of the Amendments to the Massachusetts Constitution:

> "Advertising on public ways, in public places and on private property within public view may be regulated and restricted by law."

Article 50 was adopted in 1918 following its proposal by the Massachusetts Constitutional Convention of 1917-1918. In the ex-

1 Massachusetts did not accept the federal bonus provision.

2 The Interstate system comprises 41,000 miles of highway.

3 Scenic enhancement provisions include the secondary system as well, for a total of 901,000 miles of highway.

ercise of this power, the General Court directed the Department of Public Works to formulate and establish rules and regulations for the control and restriction of billboards, signs and other advertising devices on public ways or upon private property within public view of every highway, public park or reservation, and for the licensing of such structures and for prescribing fees to cover costs of administering the law. This enabling legislation was rewritten in 1946 to substitute the newly created Outdoor Advertising Board as the state agency responsible for implementing the law (G.L. c. 93, ss. 29-33).

In addition, the Legislature apparently recognized that due to the nature of outdoor advertising it might not be adequately and appropriately controlled and supervised by general rules of statewide application, given the peculiar physical characteristics of the various cities and towns. Thus, the Legislature authorized to cities and towns to make further regulations by ordinance or by-law not inconsistent, or at variance, with regulations promulgated by the state agency.

Judicial Action

The leading Massachusetts case on advertising control is *General Outdoor Advertising Co. v. Department of Public Works,* 289 Mass. 149, decided in 1935. Various advertising companies brought suit to enjoin the State Department of Public Works from enforcing rules and regulations promulgated under authority of Article 50 of the Amendments to the Constitution. A striking similarity between the principal argument advanced by advertising companies then and that advanced today is the allegation that new regulations would destroy the advertising business.[1] The Supreme Judicial Court noted this contention in its decision, commenting, "Doubtless the initial expense to the plaintiffs of changing their signs and billboards to conform to the rules and regulations will be considerable." But, it added, *"The circumstance that the practical effect of the regulations may render the business as heretofore conducted by the plaintiffs unprofitable does not brand the regulations as invalid."* (Emphasis added).

The Court had pointed out earlier in its decision, that no restraints

[1] See 289 Mass. 149, at 190-191.

are expressed in Article 50,[1] and that every consideration for the promotion of the public interest which in view of its sweeping terms may reasonably be given weight by a lawmaking body may be taken into account and be a factor in framing regulations or restrictions.

It made plain that the people have declared by ratifying Article 50 that private interests cannot stand in the way of its declaration of the rights of the public and the power of government. Action under Article 50, the court stated, is not confined by previously held views on advertising control but "may embrace everything within the sweep of the words of that article."[2] The Court stated that in appropriate instances considerations of good taste and preservation of scenic beauty "may be decisive."[3]

Moreover, the Court was plainly not sympathetic to outdoor advertising in any form, as witness its comments on the nature of the industry:

> "The object of outdoor advertising in the nature of things is to proclaim to those who travel on highways and who resort to public reservations that which is on the advertising device, and to constrain such persons to see and comprehend the advertisement. It does not appeal alone to the desire or consent of such persons; it is forcibly thrust upon the attention of all such persons, whether willing or averse. For such persons who strongly wish to avoid advertising intrusion, there is no escape; they cannot enjoy their natural and ordinary rights to proceed unmolested. Such advertising has certain features attached to 'hawking' goods . . ."[4]

As to the denial of constitutional rights or liberties claimed by the advertising industry, the Court refused to accept this contention, stating as follows:

> ". . . the plaintiffs are not exercising a natural right, . . . they are seizing for private benefit an opportunity created for a quite different purpose by the expenditure of public money in the construction of public ways and the acquisition and improvement of public parks and reservations. The right asserted is not to own and use land or property, to live, to work, or to trade. While it may comprehend some of these fundamental liberties, its main feature is the superadded claim to use private land as a vantage ground from which to obtrude upon all the

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1 op. cit. p. 159.
2 op. cit. p. 161.
3 ibid.
4 op. cit. p. 168.

> public travelling upon highways, whether indifferent, reluctant, hostile or interested, an unescapable propaganda concerning private business with the ultimate design of promoting patronage of those advertising. * * * It is illusory to suggest that a traveller upon the highway may close his eyes and mind to the advertising matter thus displayed."[1]

The Court stated that the constitutional mandate establishing the right to regulate and restrict advertising may extend to prohibition of such advertising in certain places "though not utterly and without bound" throughout the State. The regulatory controls, to be valid, must have a reasonable basis and be designed to accomplish a permissible end. One basis of regulation, the Court said, is the promotion of safety:

> ". . . it is manifest that inattention of such licensees because of distraction for one reason or another is a fruitful source of injury to persons and property. * * * Advertising devices on private land manifestly are designed to attract the attention of motorists."[2]

The Court pointed out that the State regulatory agency had a heavy duty as to the safety of travel upon highways.[3] The safety issue is one that is still unsettled as will be indicated below.

Another permissible and reasonable ground for regulation of outdoor advertising in the eyes of the Court, is that travelers may be "free from annoyance":

> "This is not a mere matter of banishing that which in appearance may be disagreeable to some. It is protection against intrusion by foisting the words and emblems of signs and billboards upon the mass of the public against their desire. The General Court has extensive control over highways. * * * In view of art. 50 and the governing statutes enacted pursuant to its provisions, the projection from private land upon travellers on highways of the advertising words and symbols of billboards may be regulated, restricted and in appropriate places prohibited."[4]

The Court recognized that the right to own land and to use it as a source of income is a part of the liberty secured to the individual. But, the Court added, that right is subject to legislative regulation in the public interest. It cited several examples of sub-

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1 op. cit. p. 169.

2 pp. 180-181.

3 The Dept. of Public Works. The Outdoor Advertising Division was created subsequent to the decision.

4 op. cit. pp. 182-183.

ordinated individual rights[1] adding, "(t)he right of the traveller upon the highways to a peaceful and unannoyed journey so far as concerns advertising on private land is recognized by art. 50. To adjust the conflicting interests of the public and of the individual is a proper legislative function."[2]

In discussing the rules and regulations promulgated by the Department of Public Works, the Court noted that among their objectives were (1) to shield highway travellers from the unwelcome obtrusion of business appeals, and (2) to make the state attractive to both its own citizens and to visitors. It stated that "protection of scenic beauty from the intrusion of advertising on private property within public view is within its design and scope. ***To preserve such landscape from defacement promotes the public welfare and is a public purpose."[3] But the rules are also designed to promote safety of travel upon the highways (an important consideration today on heavily traveled urban expressways where preservation of outdoor advertising locations are most bitterly contested). The Court thus concluded that the regulatory controls were "within the reasonable scope of the police power to preserve from destruction the scenic beauties bestowed on the commonwealth by nature in conjunction with the promotion of safety of travel on the public ways and the protection of travelers from the intrusion of unwelcome advertising."[4] But the Court went further and said, safety factors completely aside, the controls were justified on the sole basis of preserving scenic beauty and places of historical interest.

In an extended analysis of this decision appearing in the *Harvard Law Review*[5] it was stated that "The issue . . . is not between government and business, between restraint and enterprise, but is between freedom and regimentation, between man's striving to achieve liberty through organization, and organization's striving to make man its servant and its tool."[6] Advertising has its time and place, it continued, but the attempt to fill

1 op. cit. p. 184.
2 ibid.
3 op. cit. p. 185.
4 op. cit. p. 186-187.
5 49 *Harvard Law Review* 869 (1936).
6 op. cit. p. 902.

the people's leisure hours with advertisements is merely an attempt to bind them to the service of a manufacturing scheme, a distinction recognized by the Court in upholding the restrictions.

It is some 30 years since the Court rendered the foregoing opinion, and circumstances and attitudes of course do not remain static. However, the trend in judicial thinking, as analyzed in a recent report on legal aspects of road beautification, indicates that judicial doctrine concerning use of police power to regulate outdoor advertising along express and arterial highways appears to be ready to approve stronger regulatory measures than current state laws typically provide.[1]

Current State Regulation of Outdoor Advertising

Statutory Regulation

General Laws, c. 93, ss. 29-33 contain the present Massachusetts statutory provisions that relate to control of outdoor advertising signs and devices within public view. Under section 29 the Outdoor Advertising Board is authorized to make, amend or repeal rules and regulations for control of outdoor advertising[2] on (1) public ways, and (2) private property within public view of a highway, public park or reservation. Section 29 also authorizes the Board to exclude signs from locations that are not business, commercial, industrial, marketing or mercantile areas. The Board may prescribe standards of size, setback and clearance, considering the public interest; may license signs through the issuance of permits and may prescribe permit fees to cover administrative costs. The statute requires a 30-day notice to a city or town before a permit is granted for location therein. A city or town may further regulate billboards and signs but such restrictions must be consistent with the General Laws and the Rules and Regulations of the State Board.

By law, the Board is required to hold a public hearing if a city or town formally objects to an application for a permit and indicates that it will appear in opposition to the application (S. 29A). If a permit is issued or denied by the Board's Executive Director,

1 See *Roadside Development and Beautification,* "Legal Authority and Methods," Part II, Highway Research Board, Washington, D. C. 1966.

2 The statute also requires duly advertised public hearings before establishing or amending its rules and regulations.

the aggrieved party may appeal to the full Board within 15 days of the decision. The Board, after due hearing, may affirm, modify or annul the decision. Findings of the Board are final except as to matters of law.

Section 30 prohibits advertising in public parks, and on private property within public view of a highway, public park or reservation, unless in conformance with statutes, rules or by-laws regulating such advertising. However "on-premise" signs, i.e., signs advertising a business located on the premises where the sign appears, are excluded from the provisions of this section.

Signs erected or maintained in violation of any rule or regulation of the Board shall be deemed a nuisance and the Board is given power to abate and remove such nuisance (S. 30A). The statute authorizes the Supreme Judicial Court or the Superior Court upon petition of (a) the Attorney General, (b) any city or town, or (c) any interested party, to restrain the erection or maintenance of a sign that violates any Board rule or regulation, and to order its removal or abatement, as a nuisance (S. 31).

Advertisements on a common carrier's rolling stock, and on other property under its control, are beyond the Board's jurisdiction unless such signs are displayed within view of a public way (S. 32).

Finally the law imposes a maximum fine of $100 for violation of any rule, regulation, by-law or ordinance, and an additional maximum penalty of $500 if such violater continues to unlawfully maintain such sign for 20 days thereafter.

Administrative Rules and Regulations

Under statutory authority, the Outdoor Advertising Division has established Rules and Regulations for outdoor advertising control.[1] Most recently revised on April 4, 1966, they deal with licensure, issuance of temporary and annual permits, and practices relative to location, size, and form. The rules and regulations are summarized as follows:

Licensure. Outdoor advertising as a business operation is a licensed activity. Any person, firm, association or corporation en-

[1] "Rules and Regulations for the Control and Restriction of Billboards, Signs and Other Advertising Devices," Outdoor Advertising Division, DPW, April 4, 1966.

gaging in such business in Massachusetts must first be licensed by the Division. There is an initial application fee of $25. Licenses expire annually on June 1 and renewal fees range from $25 to $300 depending on the number of permits the licensee holds. The Division reserves the right to revoke any license, presumably for any cause — it does not indicate on what basis revocation must stand.[1]

Permits. Permits are issued to licensed industry, i.e., firms that sell advertising copy, and to individual advertisers who thereby promote their own businesses.

A licensee must apply for an annual permit for each sign; there is an inspection fee of from one dollar to five dollars, determined by the size of the sign. Permitees also pay renewal permit fees and renewal inspection fees of from one dollar to five dollars, respectively.

In S. 6-0 of its Rules, the Division reserves the right to revoke any *permit* for cause.

Persons who do not engage in the business of outdoor advertising, but who wish to erect a sign that comes within the jurisdiction of the Division must apply for an annual permit, pay the inspection fee, a permit fee and a renewal inspection fee at the end of each permit period. These are so-called individual enterprises that advertise their own business, such as a restaurant, motel, hotel and the like.

Specific Requirements The Division may grant permits for signs in areas that are determined by the Division to be "of a business character." An area is so identified "wherever there are two or more properties used industrially or commercially within an area of 500 feet on either side of the proposed location of the sign, display, or device, including both sides of the highway, and said area is not predominantly residential . . . " (S. 4A). Signs erected in other than business areas and prior to the adoption of this regulation are exempted from this section provided they complied with the existing law.

Permits expire annually on June 30, and all signs must be prop-

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1 One basis, according to testimony of the Board Chairman at the 1966 hearing is if there is a physical change in the area. See *Transcript of Hearing.*

erly maintained before renewal permits will be granted. If any permit is not renewed the sign must be removed within 90 days of expiration (or revocation).

Applications for permits for signs having an "unusual character," e.g., moving or movable parts, or flashing, animated or other illumination, required a description of the motion and illumination accompanying the application for review by the Division. The Division requires an exact copy of what is intended by the applicant, before it will act upon the application.

Temporary Permits. Temporary permits allow signs to be displayed for a maximum period of 180 days; transient temporary permits are granted for a maximum 30-day period. Location of all temporary signs are subject to approval of local authorities (s. 5G). All such signs must be removed within 14 days of expiration of the permit.

General Requirements. These requirements, found in Section 6 of the Division's Rules, contain 15 paragraphs, some of which implement statutory directives of G.L., c. 93. Of particular interest, however, are the following rules which are cited by the advertising industry as evidence of customary use in this Commonwealth. The industry maintains that the proposed federal standards wholly ignore customary use in this State.

Section 6E of the Rules requires all signs to conform to dimensions and materials prescribed by the Division. Billboad dimensions shall be as follows:

3 sheet poster: 9′ high x 5′ wide (45 sq. ft.)
6 sheet poster: 7′ high x 13′ wide (91 sq. ft.)
24 sheet poster: 14′ high x 25′ wide (350 sq. ft.)
Painted Bulletin: 20′ high x 60′ wide (1200 sq. ft.)[1]

However, the Division may permit billboards of different dimensions to meet particular locations.

Setback requirements, if any, and clearance between the sign and the ground or a roof, are specified by the Division according to requirements of a particular location (s. 6F).

Advertising devices or matter displayed therein may be removed if the Division deems it objectionable (s. 6G).

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[1] The maximum size of an advertising device permitted under proposed federal standards is 650 sq. ft.

Advertising devices are excluded within the limits of a state highway, or any public way except as provided in c. 85, s. 8 of the General Laws (s. 6I). No signs are permitted within 300 ft. of a public park or reservation if within view of the same, but the Division may allow a sign if a business area is adjacent to a public park or reservation and its presence, in the Division's opinion, does not detract from enjoyment of the public tract (s. 6J).

Of special interest is s. 6L: No permit will be granted for signs at locations where "in the opinion of the Division, having regard to the health and safety of the public, the danger of fire, or the unusual scenic beauty of the territory, . . . (it) would be particularly harmful to the public welfare."

No permits will be issued for signs which, in the opinion of the Division, would obstruct the visibility of a sign approved by the Division.

Discretionary Authority of the Division

Obviously, the Division may exercise a great deal of discretion in matters which on the surface appear to be tightly restricted. Although the rules specifically set forth the dimensions of billboard posters and bulletins, the Division may grant variances. Setback and clearance rules are flexible enough to permit determination on an individual case basis. The Division can decide what matters displayed on billboards are objectionable. In allowing signs in business areas adjacent to and viewable from public parks or reservations, the Division may decide whether public enjoyment is not adversely affected. And with respect to signs that may mar the natural beauty of a locale, the Division may make the ultimate judgment. In an area of "unusual scenic beauty" as already noted, findings of the Division are final except as to matters of law.

This elasticity of Division policy undoubtedly accounts for the industry's vigorous support for adoption of the Division's Rules and Regulations as examples of customary use in Massachusetts. The flexibility and potential exceptions to the Rules of the Division are such that the advertising industry would obviously prefer to operate under them rather than the more rigid federal criteria.

Determining Factors in Decisions of the Division

The Division itself takes pride in being the first state board established by legislation to regulate outdoor advertising. It emphasizes that permits for outdoor advertising displays are restricted to business areas. Business area, of course, is defined by the Board, which may overrule a local government's denial of an application. As to spacing, neither the Massachusetts statutes nor the Division's rules regulate spacing or distance regarding off-premise signs. The Division looks at each location and bases its decision on the location, number of existing signs in the area, visibility and other relevant factors. Under its rules pertaining to setbacks and visibility, the Division can prohibit so-called nesting of signs. According to testimony of its chairman, the Division considers each application "for its own merit. The location is inspected, and each permit is handled individually" and nesting and visibility are factors that may be a determination for disapproval. The chairman of the Outdoor Advertising Board clearly appreciates "how difficult it is to set a standard for each state in the Union, because each State has its own unique characteristics."[1] Such a statement might be construed as in support of the proposed uniform federal standards or conversely, to suggest that state customary use should be adopted as controlling, depending upon which criteria are favored by the reader.

Action on Recent Applications for Permits

In answer to inquiries of the Legislative Research Bureau, the Board Secretary indicates that 90% of permits issued to individual advertisers are for signs 40 sq. ft., or less. During the last six years, billboards have declined 2.5% while 40 sq. ft. signs have increased about 22%.

In fiscal 1966, the Division disapproved 34 applications for signs that had been approved by local authorities while overruling local authority disapproval of 38 signs, for a total of 72 reversals. Twenty-five public hearings were held on applications of which five were approved and the remainder denied. The Division held six public hearings on renewable permits, allowing two, while

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1 Statement of Chairman, Outdoor Advertising Board, Public Hearing, March 22, 1966.

denying the others. Four public hearings were held on amendments and all were denied.

Many local authorities vehemently resent the power of the Board to overrule their decisions. The Division is criticized as being "industry-oriented."

The table below lists applications for permits from both the industry and individual advertisers, permits issued, and permits renewed for the period 1961-1966:

TABLE 2.
OUTDOOR ADVERTISING PERMITS GRANTED AND RENEWED, 1961-1966

	Licensed Industry		*Individual Advertisers*		*Permits Renewed*	
Fiscal Year	*Applications Received*	*Permits Issued*	*Applications Received*	*Permits Issued*	*Industry*	*Individuals*
1961	210	173	393	297	7,394	1,248
1962	166	114	477	279	6,931	1,215
1963	228	145	496	364	6,636	1,327
1964	310	170	391	249	5,796*	1,558
1965	412	343	238	190	5,715	1,672
1966	310	253	186	130	5,536	1,593

* The 1964 decrease in renewable permits by the Industry was due to one advertiser cancelling 754 permits for signs under 40 sq. ft. The billboard cancellation was approx. 1.2%.
Source: Massachusetts Outdoor Advertising Division.

Proposed Changes in Outdoor Advertising Control

Penalty for Failure to Provide Effective Control

The Federal Highway Beautification Act contains a penalty clause providing for a 10% loss of apportioned federal-aid highway funds to any State which the Secretary of Commerce determines is not exercising effective control over outdoor advertising or junkyards (S. 131b). The penalty provision is effective January 1, 1968 and continues until the State complies with the billboard and junkyard provisions.

In this light, Massachusetts, which in fiscal 1968 is apportioned $89.6 million in authorized federal-aid funds, stands to lose $8.96 million if it does not comply with federal standards, provided that the Secretary of Commerce does not suspend the penalty provisions of the beautification act for want of standards. Losses could be higher for ensuing years if proposed federal allocations are not cut back. Moreover, continued procrastination on the part

of the Commonwealth will result not only in the irrevocable loss of the aforementioned sums, but the cost of assuming effective control over non-complying advertising devices and junkyards coming into existence since September 1, 1965 will be borne entirely with state funds.

The Secretary of the Commerce has discretionary authority to suspend the penalty provisions in the case of States which act in good faith to comply but for justifiable reasons cannot meet the January 1, 1968 deadline. However, unnecessary delays in implementing the Act will probably preclude suspension of the penalty provisions.[1]

The State is not bound to accept the federal act, legally speaking — its participation is wholly discretionary but as a practical matter to reject the federal act is to surrender at least 10% of amounts otherwise apportioned for highway purposes.

The following table indicates the steady rise in federal-aid funds that serve as the basis of application of the penalty provisions.

TABLE 3

FEDERAL-AID HIGHWAY FUNDS APPORTIONED TO MASSACHUSETTS
FISCAL YEARS 1966, 1967, 1968

Year	*Primary*	*Secondary*	*Urban*	*Sub-Total*	*Interstate*	*Total*
1966[1]	$5,263,695	$2,257,799	$8,518,897	$16,040,391	$58,937,081	$74,977,472
1967[2]	5,345,190	2,295,825	8,626,731	16,267,746	64,419,000	80,686,746
1968*	5,370,985	2,308,083	8,661,763	16,340,831	73,304,680	89,645,511

1 Total is exclusive of $1,141,787 for highway planning and research (HPR).
2 Includes HPR.
* Total apportionment was $89,645,511. 1½% of this sum is deducted for planning and research projects, leaving available $88,300,830.
Source: U. S. Bureau of Public Roads.

It is anticipated that if the cost of the Vietnam war does not radically interfere with scheduled federal-aid highway work, the Massachusetts apportionment for fiscal 1969 will be around $100 million.

Massachusetts Proposal to Implement Advertising Provisions of Act

To implement the advertising control provisions of the federal act the Massachusetts Department of Public Works filed House,

1 See U. S. Senate Report 709, p. 4.

No. 123 of 1967. It inserts a new Chapter 93A in the General Laws that provides for the control of outdoor advertising adjacent to the Interstate and primary systems.

The language of House, No. 123 is based in part on provisions of the Highway Beautification Act, and in part on various requirements spelled out in official policy, procedure and instructional memoranda issued by the U.S. Bureau of Public Roads as guidelines for implementing the program. Because of its relevancy to the issue of State implementation, the following text is devoted to a section by section analysis of the proposal.

Section 1 of the bill defines terminology as follows:

Section 1. In this chapter unless the context otherwise requires, the following words shall have the following meanings:

1. "Interstate system" means that portion of the national system of interstate and defense highways located within this State, as officially designated, or as may be hereafter so designated, by the department of public works of the commonwealth, and approved by the Secretary of Commerce, pursuant to the provisions of Title 23, United States Code, "Highways."

2. "Primary systems" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the department of public works of the commonwealth, and approved by the secretary of commerce, pursuant to the provisions of Title 23, United States Code, "Highways."

3. "Outdoor advertising" means by outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main travelled way of the interstate or primary systems.

4. "Safety rest area" means an area or site established and maintained within or adjacent to the right-of-way by or under public supervision or control, for the convenience of the traveling public.

5. "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the state and providing such other information as the department of public works may consider desirable.

6. "Department" means the department of public works of the commonwealth.

Section 2 is as follows:

Section 2. No outdoor advertising shall be erected or maintained within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main travelled way of a highway in the interstate or primary systems except the following:

(a) Directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining

to natural wonders, scenic and historic attractions, as authorized by the department or required by law.

(b) Signs, displays and devices advertising activities conducted on the property upon which they are located.

(c) Signs, displays and devices advertising the sale or lease of property upon which they are located.

(d) Signs, displays and devices located in areas which are zoned industrial or commercial under authority of law.

(e) Signs, displays and devices located in unzoned commercial or industrial areas which areas shall be determined from actual land uses and defined by regulations to be promulgated by the department.

The 660 ft. control area from which advertising is excluded is the minimum area prescribed in Section 131 (b) of Title 23. Under Section 131(k) a State may impose stricter limitations.

Section 2(a) of the bill, providing exemption of directional and other official signs, is in conformance to Section 131(c) (1) of the federal law.

Section 2(b) refers to "on-premise" signs, permitted by Section 131(c) (3) of the federal law. For example, a sign advertising a restaurant and located on the restaurant's premises as opposed to the same sign appearing a few miles distant to attract the motorists.

The original federal bill filed by the Johnson Administration proposed authority to control on-premise signs but subsequently this authority was removed in a committee redraft. During debate on the bill it was emphasized that the primary aim of the legislation was to prevent continued proliferation of signs along vast stretches of highways which often do not serve the convenience of the traveling public but rather are designed to remind the motorist about a particular commodity or product. Although not controlled by federal law, nothing prevents a State from applying such restrictions.

Section 2(c) permits signs relative to sale or lease of the premises where they are located, in conformance with Section 131(c) (2) of the federal law.

Thus, with the exception of the foregoing three categories of signs and the specific authority under Section 2(d) noted below, all other signs are excluded within the control area. Directional and other official signs are subject to national standards set by the Secretary of Commerce; these will be located off the right-

of-way and within the control area. Informational signs will be within the right-of-way. On premise signs [S.2(b) and S.2(c)] are not subject to control standards.

Section 2(d) permits advertising devices to be located in industrial or commercial zones, and Section 2(e) in unzoned commercial or industrial areas subject to actual land use and departmental approval. These sections reflect requirements stipulated in Section 131(d) of the federal law. With reference to Section 2(c) (unzoned commercial areas) the bill's language refers to "actual land use" whereas the federal language is less precise: " . . . (such) areas as may be determined by agreement between the several States and the Secretary." However, Section 131(d) of the federal legislation provides that State's action defining commercial zoning will be accepted by the Secretary. On the other hand, the advertising industry insists that "customary use" should govern such agreements.

Section 3 of the bill must be read in conjunction with Section 2(d) and 2(e):

> *Section 3.* The outdoor advertising authority established under chapter ninety-three of the General Laws may issue permits for the erection and maintenance of outdoor advertising coming within the exceptions contained in subsections (d) and (e) of section two hereof, subject to the approval of the department and in accordance with the regulations to be promulgated by the department governing the issuance of these permits. Such regulations shall be consistent with the national standards promulgated by the secretary of commerce pursuant to Title 23, United States Code and agreements made under section nine of this chapter.

This provision gives the Department a veto power over the Outdoor Advertising Board with reference to the latter's issuance of permits for advertising displays within both zoned and unzoned industrial and commercial areas. Such permits must be approved by the Department which will promulgate regulations governing issuance of these permits consistent with standards to be set by the Secretary.

Section 4 of the bill prescribes a terminal date for non-conforming advertising displays:

> *Section 4.* Any sign, display or device lawfully in existence along the interstate or the primary system on the effective date of this act and which is not in conformity with the provisions contained herein shall not be required to be moved until July first, nineteen hundred and seventy. Any other sign, display or device lawfully erected which does not conform

to this act shall not be required to be moved until the end of the fifth year after it becomes nonconforming.

This section is almost identical with the language in Section 131(e) of the federal law. The deadline for removing non-conforming signs now lawfully located in the control area is July 1, 1970. Any sign lawfully erected within the control area that becomes non-conforming must be removed by the end of the fifth year after it becomes non-conforming.

Section 5 authorizes acquisition of advertising displays, including eminent domain takings, and compensation for their removal, subject to certain conditions:

Section 5. The department is authorized to acquire by purchase or otherwise or to take by eminent domain under the provisions of chapter seventy-nine of the General Laws, and, notwithstanding the provisions of said chapter seventy-nine to the contrary, to pay just compensation upon the removal of the following outdoor advertising signs, displays and devices:

(a) Those lawfully in existence on October twenty-second, nineteen hundred and sixty-five.

(b) Those lawfully on any highway made a part of the interstate or primary system on or after October twenty-second, nineteen hundred and sixty-five, and before January first, nineteen hundred and sixty-eight, and

(c) Those lawfully erected on or after January first, nineteen hundred and sixty-eight. Such compensation, notwithstanding the provisions of chapter seventy-nine to the contrary, is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display or device of all right, title, leasehold and interest in such sign, display or device; and

(b) The taking from the owner of the real property on which the sign, display or device is located, of the right to erect and maintain such signs, displays and devices thereon.

The Department is authorized to acquire and pay for those devices lawfully existing within the control area—

1. On October 22, 1965 [S. 5(a)] or
2. On highways made part of the Interstate or primary system beginning October 22, 1965 and through December 31, 1967 [S. 5(b)] or
3. Lawfully erected on or after January 1, 1968 [S. 5(c)].

Compensation is authorized only for the taking from the owner—

1. Of all legal interest in such device [S. 5(a) (a)*]
2. Of the real property on which the device is located and of the right to erect and maintain devices thereon [S. 5(b) (b)*].

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* These citations refer to paragraphs five and six of Section 5. Reference to Section 5 of the bill is confused by the fact that the draftsman used the same identifying letters (a) and (b) for different subsections.

This language is nearly identical to Section 131(g) of the federal law. The provision for compensation payments is inserted to comply with the federal act provision that requires just compensation for sign removal. The Attorney-General of the United States has ruled that failure of a State to provide just compensation for such removals will result in the application of the 10% penalty provision.

Section 6 of the bill authorizes the Department to spend available funds —

> *Section 6.* For carrying out the purposes and provision of this chapter and of Title I of the federal "Highway Beautification Act of 1965," the department may spend any funds made available for the laying out, construction, reconstruction, resurfacing, relocation or improvement of highways notwithstanding any provision of law to the contrary.

Section 7 treats advertising devices in violation of the provisions of the bill as a public nuisance and gives the Department power to abate and remove such nuisance:

> *Section 7.* Any outdoor advertising which violates the provisions of this act shall be deemed a public nuisance. The department shall have the same power to abate and remove any such nuisance as is given the board of health of a town under sections one hundred and twenty-three to one hundred and twenty-five inclusive, of chapter one hundred and eleven, and the provisions of said sections shall, so far as applicable, apply in the case of a nuisance as herein defined. The remedy provided herein shall be in addition to any other remedy provided by law.

By Section 8 the Superior Court is granted equity jurisdiction and the Court can exercise its powers in equity to restrain or remove such nuisance.

> *Section 8.* The Superior Court shall have jurisdiction in equity upon the petition of the department, to restrain the erection or maintenance of any outdoor advertising erected or maintained in violation of any provision of this chapter, and to order the removal or abatement of such outdoor advertising as a nuisance.

Under the terms of Section 9, information maps and data are made available at information centers located at safety rest areas.

> *Section 9.* The department is hereby authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas, and to establish centers at safety rest areas for the purpose of informing the public of places of interest within the commonwealth and providing such other information as may be considered desirable.

Section 10 is included to take advantage of bonus payments offered by Section 131(j) of the federal law.

Section 10. The department is hereby authorized to enter into agreements with the United States Secretary of Commerce as provided by Title 23, United States Code, relating to the control of outdoor advertising in areas adjacent to the interstate and primary systems, including the establishment of information centers at safety rest areas, and to take action in the name of the commonwealth to comply with the terms of such agreement.

Finally, other clauses worthy of special mention are the following: (a) more restrictive ordinances, regulations, or resolutions shall not be abrogated (S.2); (b) in the event of constitutional challenge, the provisions are considered severable (S.3); and (c) the resultant act takes precedence over any inconsistent general or special law (S.4).

Position of Outdoor Advertising Industry

Representatives of the outdoor advertising industry in Massachusetts have protested that the initial proposed standards formulated by the United States Bureau of Public Roads are unreasonable, arbitrary and inconsistent with customary use in this Commonwealth. At a public hearing in Boston, on March 22, 1966, outdoor advertising spokesmen testified that implementation of such proposed standards would eliminate 90% of all existing billboards in Massachusetts and in effect destroy the industry as well as wreak havoc on allied businesses and trades whose operations are directly dependent upon the advertising business.[1] The payroll of the outdoor advertising industry in Massachusetts is over $3 million annually and rentals paid to landowners affected run close to $1 million.

Customary Use

The most important objection of the advertising interests with respect to the proposed standards is the alleged failure of the Bureau of Public Roads to consider "customary use" as the controlling factor in developing the draft standards. They argue that

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1 The same drastic results were also predicted by the advertising industry more than 30 years ago when 15 bills in equity were filed in the Supreme Judicial Court seeking to enjoin the Department of Public Works from enforcing outdoor advertising controls. The Court upheld the regulatory controls in *General Outdoor Advertising Co. v. Department of Public Works,* 289 Mass. 149 (1935). Despite its dire prophecy, the advertising industry not only survived but managed to prosper as well.

the Bureau gave *no* weight to "customary use" despite the intent of Congress that such control criteria be consistent with that standard. In a summary statement of its views on the purpose and scope of the Highway Beautification Act, counsel for the Outdoor Advertising Association of America, Inc., assert that the legislative history of the Act requires that draft standards be based on size, lighting and spacing standards that are accepted practices or "customary use" in each State. The pertinent text is as follows:

> Congress provided that the Secretary and each State shall reach an agreement on the definition of unzoned commercial and industrial areas and on the criteria for controlling the size, lighting and spacing of outdoor advertising within both zoned and unzoned commercial and industrial areas. Congress expressly rejected the notion that the Secretary (or the agencies acting on his behalf) should have authority unilaterally to promulgate standards on these two matters and to require the States to accept such standards.
>
> The definition of unzoned commercial and industrial areas must be designated to achieve equality of treatment between the State's unzoned areas and similar areas in the State that are zoned. The control criteria must be consistent with the customary use.
>
> Each State is free to propose its own definition of unzoned commercial and industrial areas in accordance with the zoning principles and practices prevailing in the particular State. Each State is free to propose criteria for size, spacing, and lighting that are consistent with "customary use" in that State, which was explained as meaning "in keeping with the standard and accepted practice in an area." The State's proposals must be accepted unless its definition arbitrarily deviates from its zoning practices or its criteria are inconsistent with customary use.
>
> The Secretary cannot withhold any funds without first affording the State a full hearing; if he makes a final determination adverse to the State, the law affords a State the right of judicial review. Whether or not a final agreement is reached by January 1, 1968, Congress contemplated that no penalty reduction would be imposed on a State before fiscal year 1970.[1]

Similarly, the Massachusetts Outdoor Advertising Council has also urged that "customary use" is a vital element to be included in the formulation of any standards that are to be the basis of implementing the provisions of the Act.[2] In the absence of proper consideration of this factor the Massachusetts Outdoor Advertis-

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1 Covington & Burling, Esqs., Washington, D. C., in letter to Phillip Tucker, President Outdoor Advertising Association of America, Inc., October 17, 1966.

2 See remarks of Robert W. Meserve, Esq., Counsel, Massachusetts Outdoor Advertising Council, at Public Hearing, Mass. Dept. of Public Works Bldg., March 22, 1966.

ing Council foresees a severe, if not disastrous, impact on the industry in this State.[1] This group argues that the language in Section 131 (d)[2] makes clear beyond doubt that size, lighting and spacing of signs are to be regulated, consistent with customary use in the several States, in a manner determined by agreement between the federal and state authorities. The Council described development of customary use in Massachusetts as a "planned, consistently regulated growth" rather than a haphazard evolution. Hence, in Massachusetts, where the outdoor advertising industry has been subjected to State regulation for forty years, the Council asserts that customary use must be a controlling and determinative factor in implementing the Highway Beautification Act.

In conjunction with the Council's claim that no weight has been given to customary use by draftsmen of proposed standards, it is also argued that the draftsmen apparently drew the proposed regulations on the basis of a mental picture of the Interstate system of highways sweeping through undeveloped rural or residential terrain, ignoring the realities of the industry, particularly as it has developed and exists today in urban areas and along the primary system. The Council contends that any workable regulations must distinguish between the primary and Interstate systems, and as to both systems, distinguish again between the urbanized area and the area of "natural beauty" which is the concern of Congress.

Congress, the Council contends, had two quite distinct purposes in mind when it enacted the Highway Beautification Act: (1) to protect areas of natural beauty by excluding outdoor advertising signs from all but commercial and industrial areas; and (2) to promote the orderly development of outdoor advertising within commercial and industrial areas.[3] Therefore, continued the Council, although Congress recognized that in commercial and industrial areas, outdoor advertising is a proper and legitimate use of land, it feared that a wild proliferation of signs in these areas

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1 *Op. cit.*

2 Title 23, U. S. Code.

3 This much is stated in S. 131(d) of the Act. However, the purpose of Congress in enacting the law is clearly stated in S. 131(a): ". . . to protect public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

on the heels of exclusion from rural areas would damage the industry.

Examples of what constitutes customary use in Massachusetts were cited by the Council at the local hearing in March of 1966. With respect to size of signs the following dimensions, exclusive of border and trim, are permitted by the State's Outdoor Advertising Division:

(1) 3 Sheet Posters — 9′ high x 5′ wide
(2) 6 Sheet Posters — 7′ high x 13′ wide
(3) 24 Sheet Posters — 14′ high x 25′ wide
(4) Painted Bulletins — 20′ high x 60′ wide

The Council contends that there can be no question as to what customary use is in Massachusetts relative to size of signs in view of the long-established character of this regulatory scheme, adhered to in the 40-year period of regulations.

As to spacing, the Council argues that the draft standards are contrary to customary use and are administratively unworkable. Spacing of signs in Massachusetts is determined by the State Outdoor Advertising Division on a case by case basis. Such determinations of the Division are ostensibly made after considering the character of the street and locale, the number and nature of existing signs and the relationship of the proposed sign to existing signs. The advertising industry feels that the federal proposals of 500′ minimum spacing between signs and the limit of six signs per mile are unworkable because on many routes the average number of billboards per mile exceeds the proposed federal maximum, thus creating the problem of deciding which signs are to remain, which are to go and how such a thorny decision is to be arrived at.

In the matter of lighting, it is contended that the federal proposal barring moving light on signs is without legal support and that customary use is contrary to such a flat prohibition.

Adverse Effects of Proposed Standards

According to information furnished by sign owners, from 72% to 95% of existing signs of each Council member would have to be removed.[1] Such elimination would, in the Council's opinion,

[1] Remarks of Robert W. Meserve, Esq., Counsel, Massachusetts Outdoor Advertising Council, at Public Hearing, Mass. Dept. of Public Works Bldg., March 22, 1966.

reduce advertising coverage and exposure to a degree that advertisers would have no further interest in the medium.

In the eyes of the industry, the value of a sign depends principally on the number of persons that are likely to read it, and to a lesser extent on its size and its use in conjunction with other signs. For example, in one national survey, about 13% of all outdoor advertising units account for 33% of total revenue earned by sign owners involved. The industry claims it is heavily dependent on its "showings" on Interstate and primary roads which generate a disproportionate share of the "daily effective circulation," i.e., the number of persons in the market area likely to see the signs. Thus, these units could never be replaced by an equivalent number of new units on secondary and other roads even if such new signs were permissible under local law. In the Boston market area, painted bulletins on the Interstate and primary systems account for 81% of the "daily effective circulation," according to industry traffic counts:[1]

	All Units		*Units on Interstate & Primary*		*Percentile for Interstate & Primary*	
Boston Area	*Signs*	*"D.E.C."*	*Signs*	*"D.E.C."*	*Signs*	*"D.E.C."*
Painted Bulletins	155	7.06 million	110	5.72 million	70.1	81.0

Although in theory, secondary roads remain open for relocation of signs barred from the Interstate and primary systems, billboard companies contend that the lower volume of traffic and the poorer coverage would render such locations unprofitable. Moreover, to relocate such signs would only produce a proliferation that would be economically unfeasible and would benefit no one. The net result would be a "higher saturation with a reduced coverage," i.e., more signs but so distributed that a smaller number of people would actually view them.

The billboard interests add that it is a fallacy to assume that all of the Interstate and primary mileage along commercial and industrial areas are open to outdoor advertising. Topography, bridges, tunnels, tall buildings, parallel bodies of water, government-owned property and the width of intersecting streets preclude outdoor advertising on many sites within such zones areas. They assert that available sites occur at irregular, if not hap-

[1] Covington and Burling, Esqs., Washington, D. C. November 4, 1966.

hazard, intervals and actual spacing would be far in excess of the proposed 500 ft. minimum, a situation that opponents to the standards consider fatal to the industry. The proposed interchange criteria, according to the opponents, practically exclude all outdoor advertising from limited access roads in highly urban, commercial and industrial areas. To illustrate their predicament, advertising interests prepared tables showing the mileage available for outdoor advertising along Interstate and freeway arteries of which only the Boston area is depicted here:

TABLE 4

LIMITATIONS ON BILLBOARD LOCATIONS — BOSTON AREA

Interstate	*Mileage Surveyed*	*Excluded by State Law*	*Physically Unsuitable*	*Total Presently Available*	*Excluded by Interchange Criteria*	*Remaining Milage*
and Freeways	34.4	10.5	12.0	11.9	11.3	0.6
Non-Freeways	61.7	26.1	11.5	24.1	8.9	15.2

Source: Covington & Burling, *supra.* September 30, 1966.

A further argument is that although a site may appear to be quite desirable for outdoor advertising, it will not be used unless the landowner will lease the property at an economically feasible rental. According to experience, the companies claim that only about one potential site in five on the primary or Interstate system will actually be leased.

Congressional Policy and Intent

Billboard interests insist that although the 1965 law eliminated the bonus offered in the earlier federal regulatory statute of 1958, and imposed a 10% penalty on states that do not comply with federal standards, it nevertheless continued and reaffirmed the Congressional policy that outdoor advertising is a legitimate use of land in commercial and industrial areas. Quoting Under Secretary of Commerce Boyd, they emphasize that the 1965 legislation "is not designed to prevent all outdoor advertising . . . (but) . . . to protect the American public against the 'billboard alleys' . . . Outdoor advertising has a legitimate place as legitimate business . . . (but) . . . the entire industry has suffered from the abuses of some . . . "[1]

They stress that Congress understood that the proposed criteria would reflect controls consistent with customary use as to space,

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1 *Congressional Record,* at p. 25254, October 6, 1965.

lighting and size, and they cite the legislative history of the Act that included a House amendment (known as the Tuten Amendment) which restricts control criteria to those "consistent with customary use.[1] The Senate concurred with the House Amendment, and the industry contends that from this background it is clear that proposed criteria must be reasonably designed to protect and encourage the orderly development of the industry by reflecting what is in fact customary use in the industry.

On the foregoing basis the industry argues vigorously that " . . . *what constitutes an unzoned commercial and industrial area and who is to make that determination is crystal clear: Each State's definition of those areas is to be accepted by the Secretary unless the State's definition constitutes an arbitrary departure from the definition of commercial and industrial areas which the State uses in its zoning laws.*"[2] Therefore, continues the argument, "State law — not federally promulgated regulations — shall be the basis for deciding whether any particular area has a commercial or industrial character so that outdoor advertising is to be permitted."[3] Thus, the question whether an unzoned area is to be characterized as commercial or industrial is to be answered by referring to State law in all cases, it is argued.[4] And although the federal law provides that unzoned commercial and industrial areas may be determined by agreement between the several States and the Secretary, "Congress clearly intended that the Secretary must accept any designation of an unzoned area as commercial or industrial unless the State arbitrarily deviates from its own definition in its zoning laws of 'commercial and industrial'."[5] Hence, in light of this background, assert the opponents, there can be no doubt as to the division of responsibility established by Congress: State law controls the meaning of "commercial and industrial," and State designations of unzoned areas as "commercial or industrial" are to be accepted unless clearly arbitrary.[6]

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1 *Op. cit.*, p. 25379

2 *Comments*, Covington & Burling, Counsel to Outdoor Advertising Assoc. of America, Inc., 701 Union Trust Bldg., Washington, D.C., Aug. 29, 1966, p. 16.

3 *Op. cit.* p. 16

4 *Op. cit.*, p. 20

5 *Op. cit.*, p. 22

6 *Op. cit.*, p. 23

Vulnerability of Central v. Local Regulatory Authority

Although advertising interests have marshaled considerable data to buttress their arguments against the proposed federal criteria, they are extremely vulnerable with respect to the controversial question of local authority to regulate commercial and industrial zoning. This vulnerability appears to have resulted from the failure of national and local advertising groups to maintain a united position on this point. On the one hand, a national billboard association, the OAAA,[1] argues that only the most general guidelines should be developed on the national and state levels and that local authorities most closely associated with a particular region involved should administer the question of what is and what is not commercial or industrial land.[2] The OAAA stresses that no single fixed formula can provide an acceptable answer for all cases, hence, *local authorities* (meaning the municipal level) are best able to decide "on a case by case basis whether particular parcels of land shall be open or closed to commercial or industrial uses."[3] The argument is clear: local zoning authorities are in the best position to judge the question of proper land use; therefore, home rule should be favored.[4]

On the other hand at a recent legislative hearing[5] on proposals to give home rule powers to Massachusetts cities and towns in the matter of billboard regulation, Massachusetts outdoor advertising interests strongly opposed the bills. The Massachusetts Outdoor Advertising Council, an affiliate of the national OAAA, argues that home rule would create an impossible and chaotic situation for the advertising industry in Massachusetts by forcing it to conform to 351 different sets of zoning restrictions. Local zoning authorities in Massachusetts often deny billboard permits to advertising companies but these local actions are appealed by companies to the State's Outdoor Advertising Division which has the power to overrule the local authority. Local authorities, in turn,

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1 Outdoor Advertising Association of America, Inc.

2 *Comments,* OAAA, (Covington & Burling, Counsel) August 29, 1966, p. 36.

3 *Op. cit.,* p. 36, see also p. 67.

4 ". . . the present proposals offer rigid standards that would interfere with local self-government." p. 67.

5 Joint Committee on Mercantile Affairs, Mass. General Court, January 31, 1967.

charge that the Outdoor Advertising Division has become industry-oriented and, more often than not, ignores the community interests. In any event, when local decisions are adverse to the Massachusetts advertising companies, the industry's argument is diametrically opposite to the national OAAA position, that is, the billboard interests in this Commonwealth assert that local zoning authorities are not the best judges of proper land use; in short, home rule is a menace to the industry.[1]

To emphasize their contention that local control would produce disorder and chaos the experience of billboard companies on Cape Cod is cited as a striking example. In the early 1930's Selectmen in the Cape Cod communities appealed to the billboard companies to remove their structures so as to make the Cape a truly scenic area. In response, more than 100 standardized billboards were voluntarily removed from the Cape area beginning below the canal and extending to Provincetown. No member of the Massachusetts Outdoor Advertising Association has since built a billboard on the Cape and no locations have been leased. Although only about 215 off premise display permits are granted by the State in the Cape communities, the local governments on the other hand have authorized thousands of on-premise signs that are of all sizes and shapes and hardly a scenic delight. On-premise signs of course are not subject to control provisions of the federal law.

Nevertheless, critics of billboards assert that the industry has at times argued that (1) regulating signs is a national problem because of the problems incident to design, production and exhibition of national advertising copy, a position adopted to defeat state regulations, and (2) regulating signs is basically a state or local problem because of variances in customary use developed in individual States, a position adopted to defeat uniform regulation on a national scale.

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[1] Testimony at legislative hearing, January 31, 1967. The Massachusetts advertising industry explains their preference for state standards as one based on successful state regulation over a 40-year period. Nearly all the other states lack this experience on the state level, hence local regulation is preferred elsewhere. However, see proceedings of the White House Conference on Natural Beauty for citation of instances of a dual position taken in other states.

The dual position of the industry on this issue is obviously self-serving and weakens the billboard case on a vital issue.

Estimated Losses to Massachusetts Billboard Interests

At the March 1966 hearing, Massachusetts outdoor advertising companies presented considerable statistical data to illustrate the losses they would suffer if the proposed federal standards are adopted. It is alleged that 90% of all existing billboards in Massachusetts would be eliminated.[1] In a random sample survey of the effects of the suggested standards on its operations covering 88 locations and 176 poster panels (35% of total business) Flynn, Inc., stated that all but five locations with nine poster panels would be lost.[2] Sixty-five panels, spaced from 21′ to 396′ apart (customary use, it is argued), would be lost by the proposed 500′ minimum spacing requirement. In Metropolitan Boston, the Donnelly Company claims it will suffer the following losses, principally because of the minimum spacing requirement:[3]

Route 1, Boston - No. Attleboro,	20.3 miles	— 90 of 110	units
Boston - central city area	10.2 "	— 10 of 10	"
Route 1, Boston - Ipswich	25.2 "	— 84 of 90	"
Boston - Braintree	15.0 "	—106 of 110	"

The Callahan Co. indicates that it will lose 30 of 31 units on Route 20 between Pittsfield and the New York State line and 66 of 76 units on Route 7 from Connecticut to Vermont.[4] In a survey of 50 signs on Interstate and primary routes that account for 97% of its income, Bird of Boston states that every one would have to be removed.[5] In the Worcester area, Donnelly Company alleges it would lose 153 of 160 locations; — more than half fail to meet the minimum 500 ft. spacing. In Southeastern Massachusetts, the Fall River Advertising Co. expects to lose 19 of 25 locations in that area and Hathaway Advertising Co. of New Bedford anticipates a loss of 49 of 60 locations.[6] Also testifying as to the impact of the standards were hotel and motel associations.

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1 Transcript, p. 50.
2 Transcript, p. 52.
3 Transcript, p. 68-69.
4 Transcript, p. 68-69.
5 Transcript, p. 71.
6 Transcript, p. 78.

One prominent national motel chain stated that it would lose every one of its outdoor signs.

Modified Criteria of July, 1966

Federal criteria submitted in July 1966, modifying the original standards proposed in January 1966, were described by the OAAA as "just as unworkable, and suffer from the same fundamental defects as the earlier criteria."[1]

The OAAA further stated that "Outdoor advertising structures are not physically, are not customarily, and cannot practically be distributed along the road at regular intervals like telephone poles — even if this were a desirable aesthetic result, which it clearly is not."[2] The OAAA alleges that such proposed rigid criteria would arbitrarily prevent use of many locations where advertising would comply with local law, meet advertising need effectively, and be a legitimate commercial land use.

Repeating its assertion that Congress has declared outdoor advertising to be a legitimate business use of land in commercial and industrial areas, the advertising industry claims that the July proposals would eliminate from 50% to 100% of all outdoor advertising structures along primary and Interstate roads in the downtown commercial and industrial areas of every major city in the United States. To demonstrate the alleged destructive effect of the July criteria, the industry cites a detailed study of Donnelly signs in the Boston area. Seventy miles of freeway and non-freeway primary roads in Metropolitan Boston commercial and industrial areas were studied for effects on the industry. On the basis of using the January, 1966, proposals, Donnelly would lose 290 of 320 signs, or 90.6% of signs surveyed. In terms of the July proposals, 295 of 311 signs, or 94.8% violate one or more elements of the criteria.[2] The industry charges that guidelines which would eliminate 90% or more of signs in such an area are neither consistent with, not reflective of, customary use and clearly do not help the industry. Rigid linear spacing criteria is attacked as yielding unfair results. The industry points out that sign structures are not now and cannot practically be located at regular 500 ft. intervals. There is also the factor of competitors' signs that would preclude

[1] Covington & Burling, *Supplementary Comments*, September 12, 1966, p. 1.
[2] *Op. cit.*

relocation, or force removal, of existing signs. Along average city blocks of 400 ft., the criteria would automatically and irrevocably exclude ground signs from one-half of the total land now available.[1] Along 15 miles of Route C-1 in Greater Boston, 115 of 123 advertising units are in violation of the proposed 1,500 minimum distance from interchange ramps.[2]

The industry therefore calls for "a new approach in order to meet the congressional mandate of regulations in accordance with customary use in commercial and industrial areas.[3] That approach, the industry says, should be flexible guidelines in lieu of rigid criteria, for "*only* flexible standards can properly meet the legitimate needs of the industry and satisfy the congressional mandate to promote the reasonable, orderly and effective display of outdoor advertising."[4]

Significant Changes in Standards

The standards finally submitted to Congress in January 1967 contained several revisions of those previously proposed in July, 1966 which were the foundation of much of the discussion that appears throughout chapters in this report. The more significant changes appear in standards relating to definition of an unzoned area, size of advertising displays, spacing of signs, and deadlines for removal of non-conforming signs. These, briefly, are as follows:

Unzoned Area. Under the present definition, an unzoned or industrial area can exist only where two or more qualifying activities exist on the same side of the highway and within 300 feet of each other. The unzoned area will include the area between the activities as well as the area within a distance varying from 200 to 500 feet of the outermost or end activities. The unzoned area extends laterally from the right-of-way line to the 660-foot control zone line. The definition in the July standards required only one activity and included the area within 500 feet of the activity.

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1 *Op. cit.*, p. 12.
2 *Op. cit.*, p. 13.
3 *Op. cit.*, p. 16.
4 *Op. cit.*, p. 17.

Size. The latest proposal limits size of outdoor advertising devices to 650 square feet.

Spacing. Linear spacing requirements of 500 feet and two signs per block remain the same. However, requirements for spacing from intersections and interchanges are modified. July standards prohibited all signs within 2,000 feet of interchanges or intersections on Interstate Highways and other freeways on the primary system. They further provided for a reduction from 2,000 feet to 1,500 feet in situations where intersecting highways are less than 1.5 miles apart. The latest modification applies the 2,000 foot prohibition regardless of interchange spacing.

A requirement that ground signs be a minimum distance from intersections and interchanges has been deleted.

Grandfather Clause. The latest standards contain a "grandfather clause" that allows signs violating only the size requirements or the 500-foot or two per block rules to remain until January 1, 1973.

Billboards and Driver Safety

A recurring argument in the billboard control issue is the debate over the alleged effects of billboards on highway safety. Those who argue that billboards are a causal factor in highway accidents usually make this argument :Billboards are located along highways for the sole object of attracting the attention of the passing motorist. If the billboard is successful in its purpose, the driver's attention is attracted to the board's message and distracted from the road where it belongs. On high speed expressways this distraction can be fatal. Highway regulatory authorities generally support this position.

There have been many charges and countercharges based on the foregoing claim. Some scientific testing has been undertaken to prove that there is a correlation between the presence of billboards and the occurrence of traffic accidents where police reports list driver inattention as the sole cause of the accident. The advertising industry has called upon records and other scientific reports to prove the opposite.

Although all of the material examined on this issue has been both interesting and persuasive, it is of such a partisan flavor that it would serve no real purpose to present it here in summary

or in detail. However for those who are interested in the subject, the Madigan-Hyland report submitted to the New York State Thruway Authority states a case for a causal relationship between billboards and accidents, while a number of answers to the report have been prepared by specialists in the field of accident causation. These may be obtained from the Outdoor Advertising Association of America, or from the Massachusetts Outdoor Advertising Council. Copies of such material are also on file at the Legislative Research Bureau.

Informational Signs

Section 131(f) of the Highway Beautification Act provides that signs or displays that give "specific information in the interest of the traveling public may be erected and maintained" within rights-of-way for areas at appropriate distances from interchanges on the Interstate System. These "informational" signs must conform to federally promulgated standards.

Both House and Senate committees of the Congress[1] indicate in their reports on the Highway Beautification bill that more adequate information for motorists seeking facilities and accommodations serving travelers was desired. The conventional signs on the Interstate system, viz., "Fuel, Food and Lodging," seemed, to committee members, to be too general. Signs designating by brand names and registered trade styles and available facilities at or near an interchange were not only preferred but considered by the committees to be an essential service. According to the January 1967 standards submitted by the Bureau of Public Roads such signs will be authorized on the public right-of-way. One category of signs would give specific brand names or trademarks of gasoline and specific identification of lodging and food facilities, while another category, intended for roadside rest areas, would provide other specific information of interest to the motoring public regarding recreation, historic sights, natural wonders and similar information. The gas, food and lodging signs are designed for erection on approaches to *rural* interchanges and on the interchange ramps, where numerous motorists' services are usually not available. These information panels would not appear in urban areas, however, where motorists are aware that many services

1 Public Works Committees.

are available at or near interchanges. Up to six brands of gasoline, and up to four facilities each, offering food or lodging, may be included on the information panel. Such service signs must meet minimum criteria spelled out in the standards, which also stipulate size, color, and illumination requirements. Location of other signs that direct travelers to specific points of interest must be approved by the State Highway Department and conform to the January 1967 criteria. Smaller signs directing travelers to telephones and hospitals are also authorized at appropriate locations.

The foregoing standards for specific information panels may be subject to change following evaluation of several demonstration sign projects presently underway.

Interpretation of Compensation Provisions

Because some States were controlling and removing outdoor advertising under their police powers, the question arose as to whether compensation features of the Federal Act are mandatory, thus precluding the application of effective control by exercising the police power. To avoid uncertainties in this area, the Secretary of Commerce asked the Attorney General for an official opinion on two questions, quoted below, with pertinent portions of the answers:

> 1. Whether section 131 is to be interpreted as requiring the states to provide just compensation for sign removal which falls within the provisions of subsection (g), or whether it may be read as granting to the States the option of using their police power to accomplish such removals without compensation?

The Attorney General replied "that section 131 is to be read as requiring each State to afford just compensation as a condition of avoiding the 10% reduction in Federal-aid as provided in subsection (b)."

This answer made it necessary to consider a second question:

> 2. Whether this statutory condition on the receipt of a full measure of highway funds is invalid, as applied to a State when police power is available, because Congress cannot constitutionally impose it?

The Attorney General concluded that "whatever may be the 'outermost line' in relation to a federally subsidized highway program, the inducement in 23 U.S.C. 131 to a State to provide for and join in the compensation of persons who are adversely af-

fected by compliance . . . (is) . . . well within it. The action of the State sought by the Federal Government will not be unduly burdensome and, as to each State, constitutes a reasonable means of effectuating the removal of the billboards necessary to achieve the objective of the statute."[1]

In answer to an argument that where a State can lawfully compel the removal of a billboard without violating the 14th Amendment of the Federal Constitution, "just compensation" would not be required, the Attorney General commented:

> "It is clear, however, that Congress did not have strict constitutional usage in mind when it enacted section 131(g). As appears above, it meant to insure payment in each case of a billboard abatement covered by that section, whether or not compelled by the Constitution. It obviously employed the term 'just compensation' to set the standard for ascertaining the amount of payment."

He therefore advised that Section 131 is to be read as requiring each State to afford just compensation as a condition of avoiding the 10% penalty reduction of Section 131(b), even though it can accomplish required removals of billboards by other means.

There are no other terms or provisions in Section 131 which prescribe any standard or specify any criteria for ascertaining the amount of payment. However, the term "just compensation" has been interpreted and defined in many eminent domain cases. Together with statutory law, these decisions have established valuation and compensation standards, most often in the form of evidentiary rules that are applicable to the acquisition of outdoor advertising rights pursuant to Section 131.

It appears that existing approaches and rules for determining the market value for real estate will be valid and applicable in controlling outdoor advertising through eminent domain. Appraisal and acquisition of property interests required for highway right-of-way and those required under the Highway Beautification Act are largely similar.

Interpretation of Unzoned Commercial or Industrial Area

A particularly troublesome issue is the determination of what shall constitute an "unzoned" commercial or industrial area for

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[1] Opinion of the Attorney General of the United States to the Honorable Secretary of Commerce, November 16, 1966.

outdoor advertising control. The precise issue is whether actual commercial or industrial use is necessary to qualify land as unzoned commercial or industrial, or whether land considered "appropriate" for outdoor advertising can be designated as unzoned commercial or industrial, regardless of the present use of the land. According to the legislative history of the Act, one of the exceptions from control would be "signs located in areas zoned industrial or commercial under State law or areas used for industrial or commercial purposes."[1] It was also noted that signs may be erected within the 660 ft. control distance "if they are (1) in areas zoned industrial or commercial under authority of State law, or (2) if they are in areas *used* for industrial or commercial activities."[2] The Senate committee specifically stated that "outdoor advertising is an integral part of the business and marketing function and an established segment of the national economy; as a legitimate business, it should therefore be allowed to operate where other industrial and commercial activities are conducted."

The emphasis, from the viewpoint of the Administration and the Bureau of Public Roads, is on the language referring to where such "activities *are conducted.*" In a letter of the Secretary of Commerce to the Congress, the Secretary stated that "to avoid an obvious inequity, those areas which are *actually used* for commercial or industrial purposes should be treated as if they were zoned for such purposes."[3] Section 2 (e) of Massachusetts House, No. 123 of 1967 uses the terminology "actual land uses".

Estimated Costs of Advertising Control

The Department of Public Works has indicated that it will cost nearly $11.4 million to carry out advertising control provisions of the Highway Beautification Act. Cost estimates include just compensation for removal of advertising signs, displays and devices and related project costs. Seventy five percent of the costs will be reimbursed by the Federal Government.

Table 5 below, reveals that about 91% of these costs are attributable to more than 5,000 sign removals on the primary sys-

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1 U.S. Senate Report 709, Committee on Public Works, Summarizing S. 2084.
2 *Op. cit.*
3 Quoted in full in Congressional House Report No. 1804.

tem. The inventory of signs and the number that would have to be removed make clear the reason for the advertising industry's preference for customary use in the Commonwealth as a basis of control.

TABLE 5.
ESTIMATED COSTS OF OUTDOOR ADVERTISING CONTROL[1]

Highway System	*Number of Signs*[2]	*Signs to be Removed*	*Removal Cost*	*Engineering and Contingencies*	*Total Estimated Cost*
Interstate	376	356	$ 846,000	$ 127,000	$ 973,000
Primary	5,125	5,010	9,060,000	1,359,000	10,419,000
Total	5,501	5,366	$9,906,000	$1,486,000	$11,392,000

1 Source: Based on Table CA-1, DPW *Cost Estimates*, p. 6.

2 Excluding signs (a) along toll roads, (b) on the right-of-way, and (c) under construction.

Compliance Laws Enacted in Other States

During 1966, twelve states either enacted or amended outdoor advertising control statutes, many of which were merely interim measures that would provide some control over erection of signs.[1] Of these, Kentucky and Virginia laws appear to be the more comprehensive.

CHAPTER IV.
JUNKYARDS AND ABANDONED VEHICLES

Scope of Treatment

The joint order which is the basis of this report directed the Legislative Research Council to study the regulation of automotive salvage and junkyards. Related to this aspect of the study order is the additional directive to study the problem of abandonment of motor vehicles on private and public property inasmuch as nearly all abandoned motor vehicles, except abandoned stolen automobiles, may be classified as junk. Also related to this subject matter is the directive to study the implementation of that portion of the Highway Beautification Act which relates to the regulation of automotive junkyards along certain federally-aided highways.

A thorough understanding of problems incident to the operation and regulation of automotive salvage yards and similar facilities, and the relationship of the problem of abandoned motor vehicles,

1 Colo., Ha., Id., Ky., Mich., Miss., Mo., N.M., R.I., S.D., Vt. and Va.

requires a rather detailed description of the economic background to what is generally described as the "scrap cycle". An exhaustive treatment of the problem is omitted in the interests of brevity; however considerable literature and data on this subject are available at the Legislative Research Bureau for members of the General Court who are interested in pursuing the matter in detail. Only a summary of the vital elements in the scrap cycle appears below.

The Scrap Cycle

As related to this report, the scrap cycle includes the movement of automobile scrap from (a) the person who disposes of a non-functioning vehicle, to (b) the automotive "junkyard" or, as preferred in the industry, the wrecking or dismantling yard, to (c) the processing yard, and finally to (d) the processing facility which reclaims it for reuse by the steel making foundry or mill. Abandoned vehicles are treated separately at the end of this chapter, hence only the roles of the junkyard, processing yard, and processing facility will be mentioned here.

The Role of the Junkyard. The automotive junkyard is actually a salvage operation. "Junkers", i.e., the obsolescent or damaged vehicles, are collected for the primary purpose of salvaging all reusable parts of the vehicle. These are reconditioned and resold and often constitue two-thirds of an operator's income. When all salvageable materials are removed from junkers, the vehicle is usually sent to a scrap processing yard.

The public impression of the junkyard is generally unfavorable since the facility is not only an eyesore, offensive to the aesthetic sense, but also because it may be injurious to public health (problems related to rodents, noise and air pollution, for example) and property values (economic and scenic blight, impairment of development of surrounding sites, to cite a few).

Nevertheless, the junkyard plays a vital role in disposal of scrap metal and without it the profusion of junk would be scattered in vacant lots, back yards and other areas.

The Role of the Scrap Processor. A scrap processor's primary function is to salvage the scrap metal from the stripped vehicle for sale to mills and foundries. He buys the vehicles from the

wrecker, usually in large lots, and removes the remaining items that were of no resale value to the wrecker. The processor must be knowledgeable and experienced in metals since he has to identify, segregate, grade and prepare metallic scrap to meet specifications of the steel industry. A small processing yard contains heavy equipment that may represent a quarter-million dollar investment.

The Steel Producer. Scrap metal is used in the production of new steel. Of several varieties of scrap steel available, automobile scrap is the least desirable because it contains many impurities (glass, wood, plastic, non-ferrous metals) that adversely affect steel yields. The producer therefore will accept the scrap only if these contaminants are removed — a function of the processor. Whenever the steel industry decreases its scrap steel purchases, it eliminates the lowest quality of scrap first, viz., automobile scrap.

Technological Changes and Economic Problems. Ironically, as the number of scrapped automobiles has mounted each year (about 6 million annually) industry purchases of automobile scrap have declined. This is explained by the development of a new steel-making process called oxygen conversion. The oxygen conversion process produces new steel much faster and less expensively than the old conventional open-hearth furnace but it has less tolerance for metal contaminants. More American steel plants are adopting this method to meet foreign competition; the result is less demand and lower prices for the impure automobile scrap and an increase in the number of scrap vehicles. Two new processing methods have been developed that may alleviate the poor market situation: (a) a "Prolerized" process which removes contaminants so as to produce a high-grade quality of scrap acceptable to the industry and which satisfies air pollution controls of government, and (b) a "Lurment" process which is the product of a giant fragmentizing and shredding operation that also removes contaminants acceptably. Such plants operate in Los Angeles, Houston, Chicago and Kansas City, where the problem of old and abandoned vehicles seems to have been eliminated. A new Proler plant recently opened in Everett, Massachusetts.

Junkyard Control Provisions of the Federal Act

In brief, Title 2 of the Highway Beautification Act provides

minimum standards for the control of junkyards, scrap metal processing yards, automobile wreckers, garbage dumps, sanitary fills, and similar disposal areas, located within 1,000 feet of the nearest edge of the right-of-way along federal Interstate and primary systems. There is no precedent federal law on the control of junkyards.

Control may be achieved by screening junkyards from view through fencing or planting, or by removing facilities that cannot be effectively screened. The Federal Government will pay 75% of landscaping and screening costs. Junkyards within a 1,000 feet control area of the Interstate and primary systems that are located in zoned or unzoned industrial areas need not be screened or removed. To permit an orderly economic transition, junkyards in existence at the time of the passage of the Act that cannot conform to the provisions of the law are allowed to remain until July 1, 1970.

Under certain conditions, states may compensate owners for the costs of removal, relocation or disposal of the facilities. The Act provides that the Federal Government will reimburse the states for 75% of such costs.

Any state failing to provide effective junkyard control by January 1, 1968 may, subject to certain provisions of the Act, forfeit 10% of its federal aid apportioned funds until such time as effective control is provided. A state may impose stricter regulations if it so desires.

Effective control of junkyards can be accomplished by effective screening; if that is feasible, the junkyard may remain. Hence, junkyards may be located on Interstate or primary systems if they are properly screened. They do *not* have to be screened if they lie within the control area of the Interstate or primary system that is part of a zoned or unzoned industrial area.

Because most owners of these facilities are small businessmen, many of whom are engaged in marginal operations, it was the intent of Congress not to impose a heavy financial burden upon them by requiring that they assume the costs of landscaping or screening. The State will pay these costs with the Federal Government reimbursing 75% of the expense.

The provisions of the Federal Highway Beautification Act differ

in their definition of the control area relative to outdoor advertising and junkyards. For junkyards, the control area extends 1,000 feet from the edge of the right of way as opposed to 660 feet for advertising devices. Two factors explain the difference: (1) there is no precedent federal law on control of junkyards as there is on outdoor advertising; (2) junkyards within the control area do not have to be removed if they can be effectively screened.

The State will attempt to screen these junkyards with plantings rather than require their removal because obviously screening costs will in most cases be less than payment of just compensation to an owner for removal of the junkyard.

Another difference between advertising and junkyard control is in relation to "unzoned industrial and commercial areas". Billboards will be allowed in such areas that are determined by agreement between the State and the Secretary of Commerce. That is, the federal law requires a bilateral agreement between the States and the Secretary. As to junkyards, they will be allowed only in areas zoned "industrial" under authority of State law, or in unzoned areas to be determined by the State on the basis of land use, subject to the approval of the Secretary. That is, the federal law authorizes the State to make a unilateral decision subject to federal approval.

Sixteen States[1] and Puerto Rico have passed laws implementing junkyard control provisions of the federal act.

Massachusetts Proposal to Implement Junkyard Control

To comply with Title II of the Highway Beautification Act, the Massachusetts Department of Public Works has filed House, No. 119 of 1967. The bill was favorably reported by the Joint Committee on Highways and Motor Vehicles and was referred to the House Committee on Ways and Means.

House, No. 119 would insert in the General Laws a new chapter, 140A entitled "Junkyard Control." The following text examines and discusses the important precepts of this legislation.

Section 1 of the bill is as follows:

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1 Cal., Colo., Ha., Id., Ky., Me., Mich., Miss., Mo., N.M., P.A., R.I., S.C., S.D., Vt., and Va.

Section 1. The following terms as used in this chapter, shall, unless a different meaning clearly appears from the context, have the following meanings:

(a) The term "junk" shall mean old scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(b) The term "automobile junkyard" shall mean any establishment or place where one or more unserviceable, discarded, worn out or junked automobiles, or bodies, engines, tires, parts or accessories are gathered together.

(c) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile junkyard and the term shall include garbage dumps and sanitary fills.

(d) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated or as may hereafter be so designated, by the department of public works, and approved by the Secretary of Commerce, pursuant to the provisions of title 23, United States code, "Highways."

(e) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the department of public works, and approved by the Secretary of Commerce, pursuant to the provisions of title 23, United States code, "Highways."

(f) "Department of Public Works" shall mean the department of public works of the commonwealth.

Section 1(a) defining "junk" is practically verbatim from Section 136(d) of the Highway Beautification Act.[1] Section 1(b) defining "automobile junkyard" is identical to Section 24-14-3(b) of the Rhode Island Junkyard Control Act. Section 1(c) defining "junkyard" is the same as Section 24-14-3(c) of the Rhode Island law and nearly identical to Section 136(e) of the federal law which uses the term "automobile graveyard" in place of automobile junkyard. Sections 1(d) and 1(e) are based on definitions in common use.

According to the definitions of "automobile junkyard" and "junkyard" (ss. 1(b) and 1(c)) the operation of a scrap processing yard would be subject to all applicable provisions of the proposal. In a separate amendment, discussed below, these facilities come within control of a proposed addition to G.L. c. 140. (See proposed S.54A(b) of House, No. 119, below).

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1 Omission of the preposition "or" before the word scrap is the only difference and is probably a typographical omission.

Section 2 prohibits operation of junkyards within 1,000 feet of an Interstate or primary highway except those which are screened from view or not visible, or which lie in an industrial area, according to zoning or to actual land use:

Section 2. No person, firm, corporation or association shall establish, operate or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or primary highway, except the following:

(a) Those which are screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the system, or otherwise removed from sight.

(b) Those located within areas which are zoned for industrial use under authority of law.

(c) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commissioner of public works.

(d) Those which are not visible from the main-traveled way of the system.

This section is the same as the Rhode Island law (Section 24-14-4). Its provisions are in keeping with requirements of Section 136(c) of the Federal Act that requires screening of junkyards visible from the main traveled way and also Section 136(g) which allows unscreened yards in (a) zoned industrial areas, and (b) unzoned industrial areas used for industrial activities. Section 136(g) of the federal law provides that the state shall determine what an unzoned industrial area is and such determination is subject to federal approval.

Section 3 governs existing junkyards and those that may be subject to such control by any future inclusion of an adjacent highway in the Interstate or primary systems, where such yard is within 1,000 ft. of the right-of-way. This section requires the Department of Public Works to screen such yards at location, if feasible, either within or adjacent to, the right-of-way.

Section 3. Any junkyard lawfully in existence on the effective date of this act or which is or may be lawfully established along any highway which is hereafter made a part of the interstate or primary systems and which has been so established before the inclusion of such highway within the interstate or primary system and which is within one thousand feet of the nearest edge of the right-of-way and visible from the main-traveled way of any highway on the interstate or primary system, shall be screened, if feasible, by the department of public works at locations on the high-

way right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main-traveled way of such highways.

Section 3 is similar to the Rhode Island law but departs slightly from the language of that statute for local reasons. Its language complies with the provisions of Section 136 (j) of the federal act.

Section 4 is self-explanatory:

Section 4. The department of public works shall have the authority to promulgate rules and regulations governing the location, planting, construction and maintenance, including the materials used in screening or fencing required by this chapter.

Section 5 authorizes the Department of Public Works to purchase, or take by eminent domain, any junkyard that cannot be economically screened. Relocation, removal or disposal costs are to be paid by the State.[1] The Department may also acquire interests in land necessary to provide adequate screening.

Section 5. When the department of public works determines that the topography of the land adjoining the highway will not permit adequate screening of such junkyards or the screening of such junkyards would not be economically feasible, the department of public works may acquire by purchase or otherwise or take by eminent domain under chapter seventy-nine such land or interests in land as it deems necessary to secure the relocation, removal, or disposal of the junkyards. The department shall pay the costs of such relocation, removal or disposal as approved by said department. When the department of public works determines that it is in the best interests of the commonwealth, the department may acquire by purchase or otherwise or take by eminent domain under chapter seventy-nine such land or interests in land as may be necessary to provide adequate screening of such junkyards.

The language of this section follows closely the wording of the Rhode Island law in Section 24-14-7.

Section 6 specifically authorizes the Commissioner of Public Works or his agent the right granted to other officials under provisions of G.L. c. 140 to enter and inspect licensed junkyards.

Section 6. The commissioner of the department of public works or an agent authorized by said commissioner may at any time enter upon any premises used by any person licensed under sections fifty-four or fifty-nine of chapter one hundred and forty of the General Laws for the purpose of carrying on his licensed business to ascertain if he is conducting such business in conformity with the provisions of this chapter.

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[1] The Federal Government will reimburse 75% of these costs.

Section 7 imposes a $200 fine on persons who would obstruct an authorized entry for purposes of Section 6.

Section 7. A licensee under sections fifty-four or fifty-nine of chapter one hundred and forty of the General Laws, or any other person in charge of the licensed premises, who refuses to admit to the licensed premises an officer or agent authorized to enter said premises under section six of this chapter or any person who wilfully hinders, obstructs or prevents said authorized officer or agent from entering the premises or from making the examination authorized in the preceding section, shall be punished by a fine of not more than two hundred dollars.

Section 8 authorizes Public Works Department to seek an injunction against operation of any junkyard that does not comply with provisions of law, and to abate such nuisance.

Section 8. Junkyards which do not conform to the requirements of this chapter shall be deemed nuisances. The department of public works may make application to the superior court in the county in which junkyards established or maintained in violation of this chapter may be located for an injunction to abate such nuisances.

Section 9 states that it shall be a misdemeanor to operate a junkyard in violation of the proposed new statute. State and local police are to enforce the law and penalties are provided for violations: $50 to $100 fines or 10 to 30 days imprisonment, or both, for a first offense, and $100 to $500 fines or imprisonment for one to six months, or both, for subsequent violations.

Section 9. It shall be a misdemeanor to operate or maintain a junkyard in violation of this chapter except those junkyards lawfully in existence on the effective date of this act. It shall be the duty of the state police and the police of the cities and towns to enforce this chapter, and any person, firm, coroporation or association violating this section shall, upon conviction of the first offense, be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days, or both such fine and imprisonment, and shall for a second or subsequent conviction be fined not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment; providing, however, that any automobile junkyard violating the provisions of this chapter and of section sixty-eight of chapter one hundred and forty shall be prosecuted in accordance with the provisions of said section sixty-eight and upon conviction be subject to the penalty provided in that section.

The foregoing section is based on Section 24-14-9 of the Rhode Island law.

Section 10 is self-explanatory:

Section 10. The department of public works is hereby authorized to enter into agreements with the Secretary of Commerce of the United States as provided by title 23, United States code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and to take action in the name of the commonwealth to comply with the terms of such agreement.

Section 11 authorizes the Department of Public Works to spend monies to carry out the junkyard control provisions of the federal act:

Section 11. For carrying out the purposes and provisions of this chapter and of Title II of the federal "Highway Beautification Act of 1965," the department may expend any funds made available for the laying out, construction, reconstruction, resurfacing, relocation or improvement of highways notwithstanding any provision of law to the contrary.

House, No. 119 in addition to the foregoing proposed new chapter 140A, also amends existing G.L. c.140, by adding new sections 54A, 54B, 59A and 59B to the present statutory provisions regulating junk dealers.

Section 54A would restrict licensing of automobile junkyards defined in proposed G.L. c. 140A, s. 1, and granted under authority of existing section 54 of c. 140, to those operations that are (1) carried on within a building, or (2) wholly devoted to scrap processing and located in a "built-up industrial area," or contiguous to a railroad siding, or on or contiguous to docking facilities, or (3) more than 1,000 ft. from an Interstate or primary road, more than 600 ft. from any other state highway and more than 300 ft. from a park, bathing beach, playground, school, church or cemetery and not within ordinary view therefrom, and screened from view in accordance with minimum requirements set below:

"Section 2. Chapter 140 of the General Laws is hereby amended by inserting after section 54 the following sections:

Section 54A. No license shall be granted under section fifty-four for an automobile junkyard, as defined in section one of chapter one hundred and forty A, unless:

(a) it is to be operated and maintained entirely within a building; or unless

(b) it is to be operated and maintained exclusively for the purpose of salvaging the value as scrap of the material collected, as opposed to reselling parts to be used for the purpose for which they were originally manu-

factured, and is to be located in a built-up industrial area, or contiguous to a railroad siding, or on or contiguous to docking facilities; or unless

(c) it is:

(1) more than one thousand feet from the nearest edge of any highway on the interstate or primary system.

(2) more than six hundred feet from any other state highway; and

(3) more than three hundred feet from any park, bathing beach, playground, school, church or cemetery and is not within ordinary view therefrom and

(4) screened from view either by natural objects or well constructed and properly maintained fences at least six feet high acceptable to said city or town and in accordance with the regulations as promulgated by the department of public works and as specified on said license."

Section 54B provides that it shall be a misdemeanor to operate an automobile junkyard in violation of proposed Section 54A above, and provides for enforcement and penalties as indicated in section 9 of proposed c. 140A above.

Section 54B. It shall be a misdemeanor to operate or maintain an automobile junkyard in violation of the provisions of section fifty-four A.

It shall be the duty of the state police and the police of the cities and towns to enforce this section, and any person violating this section shall, upon conviction for the first offense, be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days, or by both such fine and imprisonment, and shall for a second or subsequent conviction be fined not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment.

In proposed Section 59A, the same restrictions of the foregoing Section 54B are applied to Class 3 licensees as defined in G.L. c. 140, s. 58. Section 59B also contains the enforcement and penalty provisions proposed in Section 54B.

Provisions of House, No. 119 also provide that (a) existing lawful junkyards licensed as Class 3 operations under c. 140, section 58 are exempt from the provisions of proposed sections 54A and 59A, (b) cities and towns may provide more restrictive regulations than provided in the proposed general laws, (c) provisions of the proposed act are severable, protecting the validity of remaining provisions should any part of the act be declared unconstitutional, and (d) all other general laws or special acts are inapplicable to the provisions of this proposed act if inconsistent therewith.

Estimated Costs of Junkyard Control

The Department of Public Works has estimated that the cost of implementing the junkyard control provisions of the Highway Beautification Act in Massachusetts will be nearly $1.9 million. Funds for junkyard control include (a) just compensation for the relocation, removal or disposal of junkyards and related project costs, and (b) screening of junkyards and related project costs. Roughly, 80% of this total would be for removal of eight junkyards on the Interstate system.

Table 6 summarizes these estimates:

TABLE 6.

ESTIMATED COSTS OF JUNKYARD CONTROL[1]

Highway System	*Junkyards To Be Removed*[2]	*Removal Cost*[3]	*Junkyards To Be Screened*[2]	*Screening Cost*[3]	*Total Estimated Cost*
Interstate	8	$1,574,000	22	$ 38,000	$1,612,000
Primary	32	65,000	138	202,000	267,000
Total	40	$1,639,000	160	$240,000	$1,879,000

[1] Based on Table CJ-1, DPW *Cost Estimates*, p. 7.

[2] Excluding Junkyards (a) along toll roads, (b) entirely on right-of-way, and (c) in zoned and unzoned industrial areas.

[3] Includes 15% for engineering and contingencies.

State Regulation of Junk Dealers and Salvage Operations ....

Mass. General Laws, c. 140, ss. 54-56 regulate junk dealers, and ss. 57-69 regulate sale of secondhand motor vehicles. Many of these statutes have no bearing on this study; only the pertinent laws will be considered. Three classes of licenses are defined in s. 58. Class I refers to an agent's or seller's license, and Class 2 licensees are those persons whose principal business is the buying and selling of secondhand vehicles; they receive a used car dealer's license. In Class 3 are persons whose principal business is to remodel, dismantle, or rebuild secondhand vehicles, or to buy and sell parts thereof, or to rebuild parts. These persons receive a motor vehicle junk license. Nearly all of those affected by Title II of the Highway Beautification Act are Class 3 licensees.

With reference to Class 3 licenses, cities and towns by ordinance or by-law "may regulate the situation of the premises" and all licenses and permits issued thereunder are subject to such ordinances and by-laws. Before a Class 3 license is issued, abutters to the applicant's premises must be given seven days' notice, followed by a public hearing on the application. Licenses may be revoked, after hearing, if the licensee violates statutory or administrative provisions, or without hearing, if the Registrar of Motor Vehicles notifies the licensing authority that the licensee is not complying. If the licensing board revokes a license, it must so notify the Registrar. The remainder of the statute deals with appellate procedure.

The Registrar is authorized to make rules and regulations consistent with Sections 57-69 relative to purchase, sale or exchange of used cars and parts thereof (S.60). All used vehicles or parts thereof that are bought or taken in exchange by Class 2 and 3 licensees, or left on their premises for such purposes, must be retained for four days unless a release is obtained from an official under the provisions of Section 64 (S.61). Each licensee must keep a record book on the premises, approved by the Registrar, showing all vital information as to identification of the vehicle, parts, buyer, seller, etc. Any change in the original identification numbers must be so stated (S.62). Class 2 and 3 licensees must send a daily report of vehicles stored, purchased and sold, to the Registrar and to police officials in the community where the licensed operation is conducted (S.63). Certain local officials, local police chiefs, or agents of the Registrar are authorized to release any person under Section 59 from retaining a used vehicle for four days before disposal (S.64).

Under Section 65, a sale of, or offer to sell, a used motor vehicle by a person not licensed under Section 59, must be preceded either by a release under Section 64, or by four days written notice to local authorities and the Registrar. Sales to Class 1 licensees are not affected by this section. Section 66 authorizes certain designated state and local officials, or persons having police powers under G.L. c. 90, to enter and inspect the premises of a person licensed under Section 59, for the purpose of ascertaining the conduct of the operation and the examination of all vehicles, parts, books, papers and inventories related thereto. Any willful

obstruction or refusal to comply with Section 66 by the person in charge of the premises may result in fine or imprisonment (S.67). A licensee, before junking a motor vehicle, must remove vehicle registration and identification plates and forward them at once to the Registrar. Failure to do so will result in revocation of his junk license (s.67A). An unlicensed operator, or a licensed operator who conducts his business in an unauthorized locale or manner, is subject to a fine of up to $100 (s. 68). Violations of any provisions of ss. 57-68 are subject to penalties of fine or imprisonment or both, except insofar as a particular penalty is prescribed elsewhere in those sections.

The Position of the Automotive Junk Dealers

In Massachusetts there are about 400 business operations that, in one manner or another, process junk vehicles.[1] Approximately 2,500 persons are employed in this activity at an annual payroll of around $12.5 million. They supply their products to the general public, rebuilders, shops specializing in auto body, glass or radiators, tire recappers, and the scrap metal processors. The Massachusetts Auto and Truck Wreckers Association, a group of salvage dealers, claims that the auto salvage business absorbs about 35% of property damage and collision losses in Massachusetts, and thus is a major factor in keeping insurance rates from climbing higher. It also asserts that the existence of auto salvage yards prevents the automobile manufacturers from holding a monopoly on replacement parts.[2]

Last year the Association appeared at the highway beautification hearing to offer suggested modifications of proposed standards for junkyard control. One of its first objections was to the federal proposal defining an unzoned industrial area. This was criticized for arbitrarily excluding a legitimate business from a zone that may be predominantly used for light industry, simply

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1 Brief of Mass. Auto and Truck Wreckers Association. HBA hearing, March 22, 1966.

2 The Association speaks only for those engaged in the business of salvaging automotive parts, although its members may also store junked automobiles. It does not include the many legally defined "pocket" automotive junkyards that are maintained at service stations, repair shops, used car dealers, and the like, where a few "junkers" may be kept.

because it is within the 1,000 ft. minimum distance prescribed by law. It is the Association's contention that primary use of an area, and not arbitrary tape measure units should be the determining factor in locating an industry in an unzoned area. However, as previously indicated, the Massachusetts bill permits junkyards in unzoned industrial areas which are to be determined from "actual land use" and defined by state regulations.[1]

Screening

The Association devoted much of its statement to its views on screening of junkyards. It feels that screening of any particular yard should not be forced or imposed upon a yardowner unless the owner is unwilling to cooperate. Rather it favors a concord between the owner and the Department of Public Works whereby the owner shall initiate the screening plan, subject to the Department's approval. This approach is suggested on the basis that the owner is best able to determine the influence of topographical and business usage features of his yard when formulating a decision as to the most effective screening plan. If his plan produces successful screening of the yard from public view, the government should confine itself to compensating the owner for the screening costs. Therefore, the Association argues that final criteria should provide that screening be consistent with the topography of the yard and surrounding areas; otherwise it fears an unnecessary usurpation of land use. In this connection it argues that whenever possible screening should be on the highway right-of-way or immediately adjacent thereto, if topographical features of a yard preclude effective screening on a yard's premises. An example would be where a rise in the road would bring into the traveler's view a low lying yard nearby. Effective screening on the highway right-of-way would probably save the yard, it is argued. (*Section 3* of House, No. 119 contains this authorization.)

Maintenance of screening, the Association feels, is not a hardship that poses a sufficient financial threat to a yardowner to require the government to take land for easement purposes so as to assure maintenance of screening. However, should a yardowner fail to maintain screening properly after its introduction,

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1 The Massachusetts bill was drafted after the hearings were held.

the Association agrees that such an easement is justified. One adverse effect of an easement, it is contended, is the introduction of an encumbrance that may affect the effective mortgage ability of the land and consequently the value of the business itself.

Giving the yardowner the privilege of initiating the screening could be the basis of an effective screening program for those yards not subject to federal standards, the Association contends. This would come about by volume purchasing from landscapers via bids so as to give the unaffected yardowners not eligible for reimbursement the advantage of greater purchasing power and advice from landscapers familiar with the problems peculiar to the industry. The Association did not indicate how many unaffected yards it might be able to persuade to voluntarily assume such costs. The proposal stems from anxiety in the industry that local governments may soon require all junkyards to be screened.

In some cases, no effective screening is possible and in these circumtances it is expected that the yard will have to be taken. If such a yard is an established business, the Association contends that every effort should be extended by the state to help the owner relocate in the same general area. Without such help the likelihood is, according to the Association, that community attitudes will bar issuance of a new license. Thus, the Association urges that eminent domain takings in the particular locale be authorized if all other efforts to relocate fail. The industry feels that such a yardowner operating in an area of limited industrial zoning would be forced to a hard bargain by sellers who may assume that a substantial compensation award was received by the displaced owner. To this, end, the Association recommended that (1) any takings of a yard be subject to preliminary negotiations that will assure a fair compensation, (2) the power of eminent domain be exercised by the state, if necessary, to effect a relocation and related to this, (3) the state be granted the power to originate such license.

Licensing

G.L. c. 140, s. 57-69 give cities and towns authority to license automobile dismantling yards. The Association fears and anticipates that many local governments will refuse to renew licenses

to yards unaffected by the Highway Beautification Act, that do not voluntarily screen their premises. It therefore proposes that the state establish authority to review local decisions in this area of control and preclude cities and towns from enacting more stringent controls than those imposed by the state. The Association proposal was too general in nature to evaluate. However, recent home rule powers granted cities and towns appear to expand local regulatory power within this reference.

Burning Rights

The Association, aware that burning of automobiles causes some pollution of air, and that air pollution controls in urban areas limit open burning, urges that limited open burning of automobiles be permitted under controlled conditions which would not be harmful. Specifically, it suggests that when atmospheric conditions, as measured by public health authorities, permit open burning without harmful effects to the populace, the right to burn during certain hours be granted for an experimental period to determine positive or negative results.

Abandoned Vehicles

Introduction

The automobile scrap cycle includes an interdependent set of businesses that operate in an unbalanced relationship. As described above, conversion processes in the steelmaking industry have lessened the volume of scrap required by steel mills. Mills and foundries are thus buying less scrap from the processors. The scrap processor, who received the stripped vehicle from the auto wreckers for the purpose of preparing it for the mill, is faced with a backlog of scrap metal. Recent price quotations for baled automobile scrap are only about half of what they were a decade ago. Processors therefore can offer very little to the wrecker for the stripped vehicle. Wreckers, in turn, cannot offer an attractive price to individuals who want to rid themselves of old automobiles. The older the car, the less is the demand for replaceable parts, therefore wreckers, whose business income is primarily resale of salvageable parts, are not willing to take in the old car whose salvage value is negligible. Thus the owner disposes of the vehicle in the manner most convenient to him — he removes iden-

tification items to avoid prosecution and leaves the car on a lot or a street.

At that point the vehicle quickly is shorn of any salvage value it may have had. Scavengers descend upon it, removing tires, wheels, bumpers, grills, etc., and what remains is a new public eyesore, a new blight, a new nuisance. The hulk of the car may become a play area for adventurous children, with dangerous items such as broken glass and protruding metal at their fingertips. Torn upholstery serves as rodent nests, drifters use the hulk as a temporary refuge. And there the hulk usually remains until the force of law requires its removal.

The number of discarded vehicles directly reflects the total production, sale and use of motor vehicles. Around six million vehicles are now "retired" annually, while current annual production is about 9 million. Passenger cars produced five or six years ago are now beginning to disappear from the highway at an accelerated pace. In another five years more than half the cars of that given model year will have gone the way of old discards. If these cars are not absorbed by an auto wrecker they likely will be abandoned.

Although a separate problem in itself, the abandoned motor vehicle is obviously another part of the overall automobile junk complex. And though an old problem especially familiar to local government officials, there is something new and alarming about abandoned vehicles: their rapid increase in number.

Many reasons explain the increase in the incidence of abandoned vehicles. Regular safety inspection by state authorities weed out a percentage of vehicles that are road risks and not worth the repair charge. General prosperity contributes to easier replacement, more frequent turnover, and earlier retirement of vehicles. Owners of badly damaged cars, or cars that are frequently breaking down, are certain to be confronted with sizeable, often prohibitive, repair costs, Towing charges to a wrecking yard may match or exceed the value of the vehicle. Other owners may be in financial distress, by reason of unemployment, illness, etc., and unable to maintain ordinary operating expenses. Finally, the correlation of this problem with the drop in the automobile scrap metal market is easy to establish by noting that most abandoned vehicles are so old that they offer no profitable salvage value to the auto

wrecker who must be selective about what he accepts if he is to avoid building an immovable scrap heap. It is seldom that a late model vehicle is abandoned; and when they are, generally such cars are either stolen or the owner has defaulted on a financial obligation.

In the wreckers' refusal to accept the older car, the normal flow of all scrap-bound vehicles is selectively reduced — only cars with salvageable parts are allowed through the barriers, the rest spill over to form the abandonment cycle. A consequence is the rise in ghost autos that suddenly appear overnight in almost every community. In some instances, these vehicles find their way into service stations, lots, or backyards of individuals who indulge in limited salvage or repair operations. Undoubtedly, much of the adverse public opinion directed toward scrap processing yards and wreckers' yards is actually generated by the more frequently observed clutter and blight that marks the backyard or service station salvage operation.

For the most part, the owner of an abandoned vehicle is never located, notwithstanding efforts by police. Once a vehicle is established as abandoned by an anonymous owner, or by one who has refused to remove it, by-laws and statutes are invoked to remove the car to a storage area.

Statutory Controls

Massachusetts General Laws, c. 90, ss. 22B, 22C and 22E contain statutory provisions that govern abandoned motor vehicles. Chapter 135, ss. 7-11 relate to abandoned property.

G.L. c. 90, s. 22B, enacted in 1963, provides a fine of from $200 to $500 for anyone who "abandons a motor vehicle on any public or private way or upon any property other than his own without the permission of the owner or lessee of said property . . . " A conviction for a violation of this section must be reported by the court to the Registrar of Motor Vehicles who may revoke the license of the person convicted for a period up to three months.

In 1965, the Legislature added Section 22C to Chapter 90. This statute provides for lawful removal and disposal of abandoned motor vehicles. In substance, the law states that if a local official having charge of public ways deems that a vehicle appears to have been abandoned by its owner after standing for more than 72

hours on a public or private way, or on private property without permission of the owner or lessee, it may be possessed and disposed of as refuse, if the cost of removal and storage exceeds the value of the vehicle. Neither the official nor the city or town, nor the police who take custody of the vehicle may be held liable in such case.

Last year, Section 22E was added to Chapter 90. This law imposes a fine of from $50 to $300 on any person who takes any part or accessory from an abandoned motor vehicle standing upon a public or private way or upon any property without the owner's or lessee's permission. Apparently one object was to discourage cannibalization of the abandoned vehicle so as to preserve at least salvage value in order to facilitate disposal.

The other general laws, relating to disposition of unclaimed property, when applied to abandoned vehicles, require police to hold property of value for two months before selling it at public auction.

Local Removal Experiences

In practice, the removal of abandoned vehicles under statutory authority has had mixed success. Cars are being removed but if the owner cannot be located, the expense of hauling them away under contract can mount to a substantial sum. In Boston, where the numbers of abandoned vehicles are rising each year, the police report few abandoned cars are in such good condition to warrant the expense of towing, sixty-day storage fees, and advertising it at auction. The police have set an arbitrary figure of $100 as the minimum value that would justify holding it. Most abandoned vehicles are classified as junk.

If investigation does not reveal it as stolen, or if the owner cannot be located after reasonable effort, the vehicle is referred to the city's Public Works Department. Provisions of Section 22C of Chapter 90 are then invoked and the car is treated as refuse. Towing contracts are held by various firms. A total of 2,838 vehicles were removed in 1964, 1,249 in 1965, and 2,818 in 1966.[1] Most of these vehicles were removed from public ways; but where abandoned vehicles on private property constituted a hazard to

1 Boston Public Works Dept., Sanitary Division.

fire protection or public health, they were removed on order of the proper city official. The city removed about 13% of the total, contractors accounted for 75% of the total. The contract cost per vehicle dropped from $8.30 in 1966 to just under $2.00 per vehicle in 1967. The new processing plant in Everett and a rise in the price of junk are said to account for the change. Scavengers are picking up many vehicles to sell to junkyards. No data are available on removals from private property.

Other Massachusetts cities and towns have adopted ordinances designed to rid their areas of junkers. According to a local official in Needham, where during a four-month campaign in 1966, more than 60 abandoned cars were removed at no expense to the town because of cooperation from located owners, the severity of the state statutory penalty has been a major reason for success ($100 to $500 fine and revocation of license for those convicted). Abandoned cars are tagged and then may be removed by either the police, fire or public works department. A town by-law imposes a $25 fine on the person who abandons a vehicle. Some cities have been paying private junk dealers up to $15 to haul away junkers left on public property.

Stiff fines are not always the answer. Attempts to impose penalties on individuals for abandonment of motor vehicles have often been unsuccessful because of the cost to locate and prosecute offenders, and because those who desert such property are generally persons whose economic and financial status make collection difficult or impossible. One possible solution, yet to be applied, is to match vehicle identification numbers with owner identification and place these data on computer tape where search and retrieval would be nearly instant, and less costly.

Removal Experience in Other Judisdictions

Washington, D.C. In a recent 14-month period, 7,000 obsolete vehicles were removed from private property within the District of Columbia and another 2,500 from the streets. Most of these were stripped of identification and usually were missing wheels or engines.

Vehicles left on private property were not impounded nor possessed by the police. They were removed by an auto wrecker, directly from the site of their abandonment to the wrecker's yard,

upon request of the property owner. Police limited their role in this transfer to the mere introduction of the wrecker to the property owner. Legality of such a program may be questionable;[1] the basis of the action is the property owner's right to remove trash from the premises. A District law provides a $50 daily fine for failure to remove an abandoned vehicle on private property that constitutes a health hazard.

Police involvement came about when property owners could not afford the towing charges of several vehicles left on their premises by others. With the health of the community a public concern, the police authorized the wrecker to tow away the abandoned vehicle without having acquired a legal title thereto, after consent to remove it had been given by the property owner. Before actual removal, police had checked all vehicles to try to ascertain ownership. The vehicles were collected at temporary storage areas in various neighborhoods for a day or so until the wrecker could haul them away.

Another District law prohibits the parking of a vehicle on the property of another without the latter's permission. Courts agreed to impose a stiff penalty if the police brought anyone before the court for this offense. Of 7,000 cars removed in this manner only three owners made complaints.

A different procedure was applied on streets since they are public property. Traffic violation notices for each illegally parked vehicle were issued, the vehicles were impounded and held for 60 days and, if unclaimed, were sold at public auction. Auctions are held monthly and from 300 to 400 vehicles are disposed of each month, primarily by sale to auto wreckers and used parts dealers. Individual buyers purchase many cars much to the displeasure of police who find that many of these are soon re-abandoned on the streets after some choice equipment has been removed. Sales prices per vehicle average twenty dollars. But some were sold for as little as one dollar and when the market was very low, they have been sold for twenty-five cents. A certificate of sale recognized in all 50 states is issued so that a valid title can be acquired by wreckers transporting vehicles into states that require evidence of title.

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[1] No certificate of title.

If more than 400 abandoned vehicles were in the streets at any one time, police cranes could not handle the load. Private contractors were hired to handle the excess in each precinct at a rate of $7.50 per vehicle.[1] Sales of the vehicles absorbed the towing costs.

New York City. The Department of Sanitation, which removes abandoned vehicles from New York City streets, has experienced a mounting increase in the number of abandoned vehicles: 2,500 in 1960, 5,117 in 1961, 6,299 in 1962, 13,579 in 1963 and an estimated 25,000 in 1964 when there were 1.5 million cars registered in the city.

Vehicles are removed on a police order, issued after a stolen car check is completed. A sanitation official evaluates the condition of the vehicle at the site of the abandonment; worthless shells are sent to a scow for transport to a sanitary landfill. If the car has scrap value it is towed to the closest of five impounding yards, stored for 30 days and then sold at auction.

Monies received from sales go to the city's general fund. Disposal costs are not defrayed from sales revenue. In the four-year period 1960-1963, 331 auctions accounted for sales of 24,000 cars and receipts of $270,000 — about $11.25 per car. Another 3,500 unsaleable cars were buried at landfills. Preliminary figures on total costs of disposing 25,000 cars in 1964 were estimated at $600,000.

An appeal to the public to bring old cars to any one of 100 Sanitation Department locations where they would be accepted and disposal arranged failed to generate any large response.

Chicago.[2] Chicago has set aside four motor vehicle storage yards located in various parts of the city to which abandoned automobiles are brought by city towcars; any owner wishing to get rid of a car is also invited to bring it to these lots. An ordinance makes it illegal to abandon any motor vehicle on any public street, and provides that any vehicle left in the street which is incapable of being driven or any motor vehicle left for more than seven days is presumed to be abandoned. Ward superintendents are directed to notify the police of any abandoned vehicles. The police commis-

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1 1964 quotation.

2 Source, *Statutory Control of Abandoned Motor Vehicles,* Illinois Legislative Council, April 1, 1965.

sioner is required to remove such vehicles to the city storage lots and make a record of all particulars concerning the vehicle (time, place, storage yard, motor vehicle number, etc.).

The police commissioner is also directed to ascertain and notify the owner that his car had been impounded by the police. If the owner cannot be ascertained or located, the commissioner must within three days notify the Secretary of State in writing of the impoundment, giving a complete description of the vehicle. The police then hold the car for 30 days, and if the vehicle is not reclaimed within that period, it is offered for sale at a public auction. Cars not sold within 60 days may be turned over to the House of Correction for dismantling.

If the impounded motor vehicle is appraised at a value of less than $100 and attempts to find and notify the owner have failed or if the owner, having been notified, fails to reclaim the vehicle, the police may auction the car without any further attempts to notify the owner, and the owner is barred from any future interest claims.

The police department has had success with the program in removing automobile hulks from the public streets, but the cost of transporting the vehicles to the storage yards exceeds the funds realized from the sale of the vehicle.

New Jersey.[1] New Jersey enacted a new law in 1964 pertaining to procedures for disposing of abandoned and unclaimed motor vehicles. The law provides that whenever a public agency takes possession of an abandoned vehicle, the State Division of Motor Vehicles is to be notified on special forms so that the ownership of the car may be verified. In the event that the car is not reclaimed within a 30-day period, the automobile may be sold at auction. If the owner is known, he must be notified by certified mail of the forthcoming sale. Similar notification must be given to any lien holder. In addition, a notice of the sale must be published in a newspaper in the city where the motor vehicle is held at least five days before the date of the sale. An owner of such a motor vehicle may reclaim the car upon payment of the costs of removal and storage of the car and any fine or penalty

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1 Source: *Statutory Control of Abandoned Motor Vehicles,* Illinois Legislative Council, April 1, 1965.

assessed. If the motor vehicle held by the public agency is a junker and cannot be put in running condition except at a cost in excess of the value thereof, the State Division of Motor Vehicles without any further certification or verification is to issue to the public agency for a fee of $1 a junk title certificate; this junk title may be assigned by the city or public agency to the purchaser of the car. The New Jersey law further provides that a public sale of an abandoned motor vehicle bars all future claims of interest and the proceeds of the sale are the property of the public agency making the sale.

Suggested Legislation

To provide statutory guidelines to the states for remedying the increasing problem of abandoned motor vehicles, the Council of State Governments has prepared a model act,[1] which is reprinted as Appendix C of this report. The basic objective of the suggested law, which is modeled on the most successful features of various state statutes on the subject, is to move low value abandoned motor vehicles back into the regular economic cycle by excepting them, under carefully prescribed conditions, for the normal resale titling requirements.

The suggested legislation provides for the public impoundment and disposition of abandoned motor vehicles, while protecting the security interest of motor vehicle holders and owners. It gives the law enforcement agencies authority to impound abandoned vehicles, including those abandoned in commercial garages; requires notification of impoundment be made to owners and lien holders; establishes an auction procedure; and provides for disposal to wreckers.

CHAPTER V.

LANDSCAPING AND SCENIC ENHANCEMENT

Reasons Advanced For A Scenic Enhancement Program

In the past, nearly all highways were designed for their usefulness. Most important was the building of adequate connections between populated areas as quickly as possible. The highway engi-

1 The Council of State Government, *Suggested State Legislation,* 1967, pp. A29 to A37.

neer and designer had to think in terms of producing the most utilitarian and best engineered road at the least cost. The rule was that highway tax dollars were not to be used for the added costs of so-called frills of aesthetic value.

Gradually this attitude changed. Evidence of aesthetically satisfying roads began to appear in urban parkways and boulevards where plantings not only screened out distracting urban environs but, their appearance, especially with age, improved the pleasure of travel and helped reduce tension of traffic. There is a strong opinion among many highway planners and perhaps most highway users that on the "complete highway" the view of the road is as important as the view from the road.

From a safety standpoint, many highway authorities are convinced that certain environmental conditions encountered along a highway have marked effects on the psychological attitude of the driver. The road that has a sufficiently wide median strip to minimize headlight glare, long sweeping curves to produce a changing panoramic view, ascending stretches leading to an elevated climax view of distant natural charms, and roadsides unblemished by billboards, makes for greater tranquility and safety.

The same school of thought argues that roads that run for vast stretches of mileage on a straight line at uniform grades, devoid of roadside care and topographical changes to take advantage of scenic offerings leads to a monotonous trip, a fatigued driver, a careless attitude and an anxiety build-up that makes the operator tense and accident prone.[1]

The scenic enhancement program, they contend, encourages highway engineers to strive to locate a highway so as to incorporate scenic attractions in the right of way or at least to bring distant scenic pleasures into focus for the enjoyment of the passing motorist. Topography is studied with the aim of using nature to the best advantage, producing more interesting views, such as a difference in grade of north and south bound lanes, while at the same time reducing construction costs by not disturbing the natural contour of the route traversed.

It is always difficult to put a monetary value on beauty and the

1 Contrast the experience of driving on two well-known highways in the same state: The Garden State Parkway and the New Jersey Turnpike.

visual character of an area. Advocates of the scenic enhancement program assert that what the nation or state is willing to spend to accomplish such aims is in part a measure of its people. Our landscape, we are reminded, is one of our resources and its preservation or its disappearance will depend on whether the public sense of aesthetic appreciation is sufficient to accept the responsibility. That it will be a costly program is now understood; cost estimates tabulated below certainly confirm the price is high. Supporters of the program argue, however, that past expenditures for roadside development, seeding, landscaping and erosion control have produced significant results in reduced maintenance expenses.

Objectives of the Program

The scenic enhancement program includes many objectives. Among the more important are the following: (a) emphasizing beauty by giving more attention during the location and design stage of road construction to aesthetic considerations; (b) acquiring scenic strips of land or easements; (c) landscaping; and (d) providing more rest areas and scenic turnouts.

Highway landscaping authorities state that initial location and design of a highway should emphasize beauty. It is not enough to engineer highways just for vehicles; roads should be designed for the people who not only use them for their utilitarian value but who also see them and live with them as part of their daily environment. Thus, higher visual standards in design are basic to a successful scenic enhancement program.

Landscaping authorities point out that many considerations increasing the beauty of our highways are also functional and will actually facilitate maintenance. Moreover, the concept of imitating nature rather than fighting it will help reduce maintenance costs.[1]

In view of the funds already appropriated for this purpose and the cost estimates submitted for future work, this phase of highway beautification promises to be the most important to the highway user. There will be an acceleration in the rate and number of landscaping projects developed such as rest areas, scenic over-

1 Several examples of how this can be accomplished are given by C. R. Anderson, Maryland State Roads Commission, in "Highway Aesthetics Program", *Public Works*, October, 1965, pp. 100-102.

looks and similar facilities. A reasonable balance will have to be struck with reference to distribution of available funds among scenic easement acquisition, landscaping projects, and development of rest areas and scenic overlooks. Legislation to authorize certain of these programs is the first step necessary.

Provisions Of The Federal Act

Title 3 of the Highway Beautification Act contains the landscaping and scenic enhancement provisions. It amends Section 319 of Title 23, U.S. Code to provide states with a new source of non-matching federal funds, and broadens their use for beautification purposes.

Under the previous language of Section 319, federal-aid highway construction funds were authorized for landscaping and roadside development, including acquisition and development of rest and recreational areas. That section also provided that 3% of a state's federal-aid apportionment could be used without matching funds of the State, for the acquisition of strips of land adjacent to the highway right-of-way for beautification purposes. Highway Trust Fund monies were used to finance these projects.

The 1965 revision continues, in general, the use of Highway Trust Fund monies for these purposes when approved as a part of the construction of federal aid highways. This includes acquisition and development of rest and recreation areas plus sanitary and other facilities necessary to accommodate the motorist, provided they are publicly owned and controlled [S.319(a)].

But it changes the old statute by broadening the scope of activity and excludes the use of Highway Trust Fund monies for the expanded purposes. The new law provides that not only may General Fund monies be used for landscape and roadside development within and outside the highway right of way, including acquisition, but also for restoration, preservation and enhancement projects.

An amount equal to 3% of the State's federal-aid highway fund apportionment will be distributed to each participating state under the new law. On the basis of an $89.6 million apportionment in fiscal 1968 from the Highway Trust Fund, the Commonwealth will receive nearly $2.7 million, or a proportional amount of whatever sum Congress appropriated for such program, for the scenic

enhancement program. The Highway Trust Fund thus serves only as a base of measurement, the trust fund itself is not affected. However, the General Fund monies must be used in the fiscal year for which they are appropriated; otherwise they will lapse.

Previous federal statutes authorizing use of federal-aid highway funds required all highways constructed with federal-aid participation to have a right-of-way of ample width, i.e., adequate and necessary for construction, operation and maintenance of the road. Allowance was made for future traffic needs and such factors as safety, durability and maintenance. However, no state was required to acquire title to, or control of, any marginal land along a proposed highway that was beyond existing or contemplated needs. Thus to realize the objectives of the scenic enhancement program, state highway departments must have statutory authority to (1) purchase or otherwise acquire interests in strips of land adjacent to federal-aid highways, and (2) acquire title to, or control of, marginal lands along such highways. When such statutory authority has been bestowed, the United States Bureau of Public Roads will review each project proposal to determine physical needs and legal interests necessary to carry out the program before giving its approval.

Frequently, officials will take an easement interest in the land rather than purchase property outright. An easement is a right to use or enjoy land which belongs to another. A common type of easement is a right of way to reach the property owned by the holder of the easement. A scenic easement results when the property owner conveys his right to do anything to the land that would interfere with a scenic or recreation resource on the property, or to do anything inconsistent with the law. As an illustration, the owner might give up the right to drain or fill in a natural pond adjacent to a highway. The document of conveyance might be very specific, according to the particular site involved. For example, it might preclude the building of any structure on the land, or it might limit the type, size, height, or location of any structure allowed. A scenic easement, in brief, would be tailored to meet the particular location and needs.

Whereas funds appropriated for control of outdoor advertising and junkyards are limited to the federal Interstate and primary

highway systems, disbursements allocated under the scenic enhancement provisions may be applied to the secondary system as well, without restrictions as to amounts to be spent on any one system. When a state's plans, specifications, and cost estimates of scenic projects are approved by the U.S. Bureau of Public Roads, it may proceed with preliminary engineering, right-of-way acquisition, or construction — thus protecting the funds from lapsing in any given fiscal year.

Types of Scenic Enhancement Acquisitions[1]

Right of ways for highway projects are commonly acquired through (a) the outright purchase of the locus involved, or (b) the taking of a permanent easement in the land. The passage of the Highway Beautification Act has modified the extent of the legal interest in land necessary to implement the beautification program. Such legal concepts are not in themselves new but as applied to highway right-of-way acquisitions, they may be considered a relatively uncommon or novel approach.

The fee simple acquisition offers the greatest ease of administration. By this method a State obtains an absolute title to all the land in question by deed, gift, devise, condemnation or other such method employed in acquiring the land. A local government, public utility, and sometimes a private landowner, might retain a non-interfering easement acceptable to the State. Fee simple acquisition is recommended where substantial improvements will be constructed as in the case of roadside rest areas or recreational facilities. Frequently, however, a fee simple title cannot be justified economically or administratively. In such a situation, other options must be considerd that will adequately control the use of lands adjacent to the highway.

In some cases, the continued use of the property would not be inconsistent with the scenic enhancement program — for example, a pasture for livestock. Such use would often be permissible and the only guarantee the state would seek would be the continued use for that purpose. The arrangement in such case would

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1 For a detailed treatment of this subject, see "Alternatives in the Control of Scenic Enhancement Acquisitions", S. Z. Phillips, Chief, Procedures Division, Office of Right-of-Way and Location, U. S. Bureau of Public Roads.

probably restrict the property against a more intensive use, preclude any substantial improvement thereon, and if possible, prevent an alienation of the retained interest. Before deciding on such a course, the highway agency would have to consider its needs in relation to the present occupancy, the life-expectancy of any facilities to be occupied, and the needs and long-range interests of the owner, among other factors.

When a fee simple acquisition seems unwise or impractical and an interest that is less than absolute title would provide a desirable control, it is suggested that acquisition of a fee with the right to sell-off of rights not necessary for continuing highway use be considered. Sell-off rights would include all those attributes of real property ownership not required for highway purposes. After fee acquisition, the state could convey away such rights as would permit the use of the property for acceptable purposes, for example, agricultural use or residential purposes. Among advantages of a purchase and sell-off method are (1) the owner might be unwilling to sell only part of the property, (2) the total net cost of acquisition would be less and (3) the property would continue to yield tax revenues to the community. Administrative work involved in purchase and sell-off would be more costly in this approach, however.

A similar approach is the purchase and lease-off of rights not required by highway operations. However, if a substantial investment is intended by either party, a sell-off arrangement would be preferable to a lease-off.

Some of the states have experience in acquiring a less-than-fee title, often referred to as a scenic easement. When a project is located in rural areas with relatively static land use patterns, the experience has been highly favorable particularly if the terrain does not lend itself to more intensive land usage. On the other hand, when the project is in the path of more intensive land usage with an accompanying rapid rise in land values, tax increases, and pressures for development, serious problems arise. Because state experience in this type acquisition is so divergent, no generalizations are apparent and no definite conclusions as to relative net cost of the acquisition can be drawn, other than to state that (1) such cost would be less than a fee interest, (2) maintenance

costs would be less, (3) the property would continue to produce tax revenues and (4) community reaction would be more favorable. A disadvantage would be that the state could only exercise the specific controls spelled out in the document of conveyance. Obvious controls a State may want to insist upon include:

(a) the perpetuation of the existing land use;
(b) a restriction on further improvements (e.g., no new buildings, roads, billboards);
(c) a restriction on the right to engage in particular activities inconsistent with the scenic acquisition;
(d) the right to review and approve any plans prior to construction;
(e) a restriction against any activity that would cause pollution of water or air, or any noise amounting to a legal nuisance;
(f) A restriction against dumping trash or debris upon the land;
(g) a restriction on unlimited harvest of vegetable cover (e.g., stripping the land of standing timber or brush. Experience of the National Park Service indicates that the best approach in protecting scenic timber areas is to acquire a fee interest with a lease-off of unneeded rights);
(h) a prohibition against alteration or destruction of particular historic, scientific or topographical features;
(i) the right to enter for maintenance purposes or the right of public access for recreation purposes. If necessary public access would be restricted to certain areas or routes. Legal problems such as liability of landowners would have to be considered; and
(j) Seasonal rights-of-entry in particular cases.

Acquisition of Non-abutting Scenic Strips

One question that has arisen is whether the law permits acquisition of a scenic strip which does not immediately abut the right-of-way, e.g., an unusual scenic view separated from the highway by a railroad right-of-way. According to the Bureau of Public Roads, the protectible scenic beauty need be only adjacent to and not necessarily abut the highway. In other words, if a scenic strip is visible from an adjacent highway, its acquisition would be justified. However, where an interest in such a parcel is acquired it may create problems of traversing intervening land for maintenance or policy, thus presenting the problem of entry rights for the state which would be necessary to be eligible for federal participation.

Statutory and Constitutional Authority re Scenic Acquisitions

In response to an inquiry of the Massachusetts Commissioner of

Public Works relative to the Department's power to acquire by eminent domain land adjacent to highways for the purpose of preserving scenic beauty, the Attorney-General answered that (1) the Department lacks the statutory authority to take by eminent domain strips of property adjacent to highways *solely* for the preservation of natural beauty, but (2) the General Court may constitutionally enact a statute for this purpose.[1] (The full opinion appears as Appendix D to this report).

The Attorney-General relied on Article 49 of the Amendments to the Constitution as the basis of his conclusion that such statutory authorization would be constitutional. No reference was made to the Supreme Judicial Court's language in the General Outdoor Advertising Case but it seems pertinent to quote here:

> "It is, in our opinion, within the reasonable scope of the police power to preserve from destruction the scenic beauties bestowed on the Commonwealth by nature in conjunction with the promotion of safety of travel in the public ways and the protection of travellers from the intrusion of unwelcome advertising."[2]

In his opinion, the Attorney General referred to statutory provisions authorizing the Department of Public Works to accept gifts of easements in lands bordering on state highways for the purpose of landscaping and improving such lands according to a comprehensive plan of highway beautification, artistic landscaping and scenic development (G.L. c. 81, s. 13A). But, the Attorney-General added, the law does not expressly authorize takings by eminent domain. He continued, "If the Legislature intended takings by eminent domain to accomplish the 'comprehensive plan of highway beautification', it must explicitly delegate that power for that purpose."

It appears therefore that the only real obstacles to this aspect of the beautification program, other than the cost features, lie in (1) a complete understanding of the scope of the law, and (2) obtaining requisite authority under State law to perform the nec-

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1 Opinion of the Attorney General relative to Eminent Domain Takings Adjacent to Highways to Preserve Natural Beauty, October 5, 1965, (In letter to Public Works Commissioner, 10 pp.)

2 *General Outdoor Advertising Co., Inc., et al. v. Department of Public Works*, 289 Mass. 149, 186-187 (1935).

essary acquisitions. On this latter score, at least 21 States had existing authority to acquire scenic easements or strips adjacent to the highway for preservation of natural beauty. Other States have added such authority in the last year.

DPW Proposal to Implement Scenic Enhancement Provisions

The Massachusetts Department of Public Works filed House, No. 120 of 1967 as part of its recommendations to implement the Federal Highway Beautification Program.

The shortest of the implementation proposals, House No. 120 would amend G.L. c. 81 by adding a new section 13A. It gives the Department of Public Works authority to acquire by eminent domain, or by purchase, or otherwise, land and rights in land within and adjacent to federal-aid highways for the following purposes: restoring, preserving and enhancing scenic beauty, or with the approval of the Massachusetts Historical Commission and subject to the availability of federal reimbursement, historic sites adjacent to such highways. It also authorizes the Department to provide publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to such highways that are reasonably necessary to accommodate the travelling public.

The proposal has been approved by the Joint Committee on Highways and Motor Vehicles and is currently being considered by the House Ways & Means Committee.

Estimated Costs of Scenic Enhancement

As shown in Table 1 (See Chapter II), the total cost of implementing the scenic enhancement program in Massachusetts will be at least $14 million, if only top quality projects are undertaken. If all desirable and feasible projects are authorized, another $21.82 millions for scenic projects would be spent, making a total of $35.82 millions for the scenic enhancement program.

The program includes expenditures for acquisition and development of scenic strips, landscaping and roadside development, and rest and recreation areas. Landscaping and scenic enhancement expenditures provide for (a) acquisition of interests in proposed scenic strips off the right-of-way and for their improvement and

development, (b) landscaping and roadside development off rights-of-way, excluding rest and recreation areas and scenic overlooks, and (c) rest and recreation areas on the right-of-way including landscaping and roadside development.

The following table summarizes estimated costs of these programs on the respective federal-aid highway systems:

TABLE 7

ESTIMATED COSTS OF MASSACHUSETTS PRINCIPAL BEAUTIFICATION PROGRAMS[1]
(in thousands of dollars)

All Desirable and Feasible Projects

	Highway System			
Category	*Interstate*	*Primary*	*Selected Secondary*	*Totals*
Scenic Strips and Rest Areas[2]	$ 535.	$ 2,186.	$ 395.	$ 3,116.
Rest and Recreation Areas[3]	3,991.	8,799.	846.	13,636.
Landscaping & Roadside Development[4]	7,945.	10,440.	683.	19,068.
Total	$12,471.	$21,425.	$1,924.	$35,820.

Top Quality Projects Only

Scenic Strips and Rest Areas[5]	$ 214.	$ 1,134.	$ 153.	$ 1,501.
Rest and Recreation Areas[6]	2,397.	3,326.	255.	5,978.
Landscaping & Roadside Development[7]	3,821.	2,700.	—	6,521.
Total	$ 6,432.	$ 7,160.	$ 408.	$14,000.

1 For detailed project costs on individual routes, see "Estimates of the Cost of Carrying Out the Provisions of the Highway Beautification Act of 1965 in the Commonwealth of Massachusetts", October, 1966. Mass. Dept. of Public Works, Boston, 56 pp., processed.

2 Based on tables LS-1, LS-2, and LS-3, DPW *Cost Estimates,* supra.

3 Based on tables LS-7 LS-8, and LS-9, DPW *Cost Estimates,* supra.

4 Based on tables LS-4, LS-5, and LS-6, DPW *Cost Estimates,* supra.

5 Based on tables LS-11T, LS-12T, and LS-13T, DPW *Cost Estimates,* supra.

6 Based on tables LS-17T, LS-18T, and LS-19T, DPW *Cost Estimates,* supra.

7 Based on tables L-14T and LS-15T, DPW *Cost Estimates,* supra.

The Commonwealth of Massachusetts

APPENDIX A

THE FEDERAL HIGHWAY BEAUTIFICATION ACT OF 1965
(Public Law 89-285, October 22, 1965)

AN ACT

TO PROVIDE FOR SCENIC DEVELOPMENT AND ROAD BEAUTIFICATION OF THE FEDERAL-AID HIGHWAY SYSTEMS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

Sec. 101. Section 131 of title 23, United States Code, is revised to read as follows:

"§131. *Control of outdoor advertising*

"(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

"(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to

national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

"(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

"(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

"(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from inter changes on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

"(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices —

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

"(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

"(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

"(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

"(h) All public lands or reservations of the United States which are adjacent

to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

"(i) In order to provide information in the specific interest of the traveling public, the State highway departments are authorized to maintain maps and to permit informational directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

"(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

"(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

"(l) Not less than sixty days before making a final determination to withhold funds from a State under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and

this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

"(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Sec. 102. The table of sections of chapter 1 of title 23 of the United States Code is amended by striking out

"131. Areas adjacent to the Interstate System."

and inserting in lieu thereof

"131. Control of outdoor Advertising."

TITLE II

Sec. 201. Chapter 1 of title 23, United States Code, is amended to add at the end thereof the following new section:

"§136. *Control of junkyards*

"(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

"(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and maintenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

"(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

"(d) The term 'junk' shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

"(e) The term 'automobile graveyard' shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying,

or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

"(f) The term 'junkyard' shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

"(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

"(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

"(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

"(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards —

"(1) those lawfully in existence on the date of enactment of this subsection,

"(2) those lawfully along any highway made a part of the interstate or primary system on or after the enactment of this subsection and before January 1, 1968, and

"(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

"(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

"(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

"(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section."

Sec. 202. The table of sections of chapter 1, title 23, United States Code, is amended by adding at the end thereof the following:

"136. Control of junkyards."

TITLE III

Sec. 301. (a) Section 319 of title 23, United States Code, is revised to read as follows:

"§319. *Landscaping and scenic enhancement*

"(a) The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public.

"(b) An amount equivalent to 3 per centum of the funds apportioned to a State for Federal-aid highways for any fiscal year shall be allocated to that State out of funds appropriated under authority of this subsection, which shall be used for landscape and roadside development within the highway right-of-way and for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public, without being matched by the State. The Secretary may authorize exceptions from this requirement, upon application of a State and upon a showing that such amount is in excess of the needs of the State for these purposes. Any funds not used as required by this subsection shall lapse. There is authorized to be appropriated to carry out this subsection, out of any money in the Treasury not otherwise appropriated, not to exceed $120,000,000 for the fiscal year ending June 30, 1966, and not to exceed $120,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this subsection."

(b) The table of sections of chapter 3 of title 23 of the United States Code is amended by striking out

"319. Landscaping."

and inserting in lieu thereof

"319. Landscaping and scenic enhancement."

Sec. 302. In order to provide the basis for evaluating the continuing programs authorized by this Act, and to furnish the Congress with the information necessary for authorization of appropriations for fiscal years beginning after June 30, 1967, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of carrying out the provisions of this Act, and a comprehensive study of the economic impact of such programs on affected individuals and commercial and industrial enterprises, the effectiveness of such programs and the public and private benefits realized thereby, and alternate or improved methods of accomplishing the objectives of this Act. The Secretary shall submit such detailed estimate and a report concerning such comprehensive study to the Congress not later than January 10, 1967.

Sec. 303. (a) Before the promulgation of standards, criteria, and rules and regulations, necessary to carry out sections 131 and 136 of title 23 of the United States Code, the Secretary of Commerce shall hold public hearings in each State for the purpose of gathering all relevant information on which to base such standards, criteria, and rules and regulations.

(b) The Secretary of Commerce shall report to Congress, not later than January 10, 1967, all standards, criteria, and rules and regulations to be applied in carrying out sections 131 and 136 of title 23 of the United States Code.

Sec. 304. There is authorized to be appropriated the sum of $500,000 to enable the Secretary of Commerce to carry out his functions under section 135 of title 23 of the United States Code relating to highway safety programs.

Sec. 305. Nothing in this Act or the amendments made by this Act shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings).

TITLE IV

Sec. 401. Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act.

Sec. 402. In addition to any other amounts authorized by this Act and the amendments made by this Act, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Secretary of Commerce not to exceed $5,000,000 for administrative expenses in carrying out this Act (including amendments made by this Act).

Sec. 403. This Act may be cited as the "Highway Beautification Act of 1965."

Approved October 22, 1965, 2:30 p.m.

APPENDIX B

PROPOSED STANDARDS, CRITERIA, AND RULES AND REGULATIONS TO CARRY OUT PROVISIONS OF THE HIGHWAY BEAUTIFICATION ACT OF 1965

Submitted to the Congress by the Secretary of Commerce

PROPOSED STANDARDS AND CRITERIA FOR SIZE, LIGHTING AND SPACING OF SIGNS PERMITTED IN COMMERCIAL OR INDUSTRIAL ZONES AND AREAS, INCLUDING THE DEFINITION OF AN UNZONED COMMERCIAL OR INDUSTRIAL AREA FOR OUTDOOR ADVERTISING CONTROL

The provisions herein do not apply to on-premise advertising or to official and directional signs as permitted under section 131(c) of Title 23, United States Code.

Nothing contained herein shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those set out below.

Any sign, display, or device lawfully in existence in commercial or industrial zones or unzoned areas, as defined herein, along the Interstate system or the Federal-aid primary system, on the effective date of the agreement between the Secretary of Commerce and the State, which exceeds the maximum size requirement and/or which does not comply with the requirements for spacing between signs or the number of signs permitted between intersecting streets set forth in the agreement, shall become non-conforming on January 1, 1968, and may not be required to be removed until the end of the fifth year thereafter. The Federal share of compensation paid therefor shall be based on the value of the sign, display or device on January 1, 1968, depreciated to the date of removal.

DEFINITIONS

Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

Traveled way means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Main traveled way means the through traffic lanes exclusive of frontage roads, auxiliary lanes, and ramps.

Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

An unzoned commercial or industrial area shall mean:

1. The lands occupied by the regularly used buildings, parking lots, storage or processing areas of two or more separate and distinct commercial and/or industrial activities located on the same side of the highway and not more than 300 feet apart, and
2. The lands lying between said activities, if any, and
3. Those lands along the highway for a distance of 200 feet, immediately adjacent to the outermost or end activities.

If said activities and the land lying between, if any, have a combined highway frontage of more than 400 feet, the unzoned area shall include the lands immediately adjacent to the outermost or end activities for a distance equal to one-half of the said combined highway frontage but in no case shall this distance exceed 500 feet.

Should one or more of said activities not front on the highway, the width of the activity or activities, measured parallel to the highway at the widest point of the activity and within 660 feet of the right-of-way will be considered to be its highway frontage. However, in no instance shall the combined highway frontage of all activities exceed the distance between the outermost edges of the end activities.

All measurements shall be from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activities, and shall be along or parallel to the edge of pavement of the highway. Measurements shall not be from the property lines of the activities, unless said property lines coincide with the limits of the regularly used buildings, parking lots, storage or processing areas.

The unzoned area shall not include:

1. Land on the opposite side of the highway from said activities.
2. Land predominantly used for residential purposes.
3. Land zoned by State or local law, regulation or ordinance.

Commercial or industrial activities, for purposes of this definition, shall mean those activities permitted only in a commercial, business or industrial zone, or in less restrictive zones, by the nearest zoning authority within the State, or prohibited by said authority but generally recognized as commercial or industrial by other zoning authorities within the State, except that none of the following shall be considered commercial or industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands.
3. Activities normally and regularly in operation less than three months of the year.
4. Transient or temporary activities.
5. Activities not visible from the main traveled way.
6. Activities more than 300 feet from the nearest edge of the main traveled way.
7. Activities conducted in a building principally used as a residence.
8. Railroad tracks and minor sidings.

Should any commercial or industrial activity, which has been used in defining or delineating an unzoned area, cease to operate, the unzoned area shall be redefined or redelineated based on the remaining activities. Any signs located within the former unzoned area but located outside the unzoned area, based on its new dimensions, shall become nonconforming.

GENERAL. The following signs shall not be permitted.

1. Signs which imitate or resemble any official traffic sign, signal or device.
2. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features.
3. Signs which are structurally unsafe or in disrepair.

SIZE OF SIGNS

1. A. No sign shall exceed the following limits:
   (1) Maximum area — 650 sq. ft.; (2) Maximum height — 25 ft.;
   (3) Maximum length — 50 ft.
   B. All dimensions include border, trim, cutouts, and extensions, but exclude decorative bases and supports.
2. Double faced, back-to-back or V type signs shall be considered as two signs.
3. Signs which exceed 325 sq. ft. in area may not be double faced (abutting and facing the same direction).

SPACING OF SIGNS

1. Interstate and Primary Highways
   A. Signs may not be located in such a manner as to obscure, or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.
   B. Signs may not be located within 500 feet of any of the following which are adjacent to the highway:

1. Public Parks, 2. Public Forests, 3. Public Playgrounds, 4. Scenic areas designated as such by the State highway department or other State agency having and exercising such authority.

2. Interstate Highways and Freeways on the Primary System
   A. Spacing between signs along each side of the highway shall be a minimum of 500 feet. Double faced, back-to-back and V type signs are prohibited.
   B. No sign may be located within 2,000 feet of an interchange, or intersection at grade, or rest area (measured along the interstate highway or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).
3. Non-Freeway Primary Routes
   A. The location of signs situated between streets, roads or highways entering into or intersecting the main traveled way shall conform to the following minimum spacing criteria, to be applied separately

to each side of the primary highway:

(1) Where the distance between centerlines of intersecting streets or highways is less than 1,500 feet, two signs shall be permitted between such intersecting streets or highways.

(2) Where the distance between centerlines of intersecting streets or highways is 1,500 feet or more, minimum spacing between signs shall be 500 feet. Two signs will be permitted at a single location, either double faced, V type, or back-to-back, but any such signs shall be at least 1,000 feet from any other sign.

B. Explanatory Notes

(1) Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.

(2) Only roads, streets and highways which enter directly into the main traveled way of the primary highway shall be regarded as intersecting.

(3) Official and "on premise" signs, as defined in section 131(c) of Title 23, U.S.C., shall not be counted nor shall measurements be made from them for purposes of determining compliance with the 500-foot or two per block requirements.

(4) The minimum distance between signs of 500 feet and 1000 feet shall be measured along the nearest edge of the pavement between points directly opposite the signs.

LIGHTING. Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
2. Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the interstate or primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
3. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

PROPOSED CRITERIA FOR DETERMINING AN UNZONED INDUSTRIAL AREA FOR JUNKYARD CONTROL

An unzoned industrial area shall mean the land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within 1,000 feet thereof which is:

1. Located on the same side of the highway as the principal part of said activity, and
2. Not predominantly used for residential or commercial purposes, and
3. Not zoned by State or local law, regulation or ordinance.

Industrial activities, for purposes of this definition, shall mean those per-

mitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the State, or prohibited by said authority but generally recognized as industrial by other zoning authorities within the State, except that none of the following shall be considered industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming and related activities, including, but not limited, to, wayside fresh produce stands.
3. Activities normally and regularly in operation less than three months a year.
4. Transient or temporary activities.
5. Activities not visible from the traffic lanes of the main traveled way.
6. Activities more than 300 feet from the nearest edge of the main traveled way.
7. Activities conducted in a building principally used as a residence.
8. Railroad tracks, minor sidings, and passenger depots.
9. Junkyards, as defined in Section 136, Title 23, USC.

PROPOSED NATIONAL STANDARDS CONCERNING OUTDOOR ADVERTISING CONTROLS ON PUBLIC LANDS AND RESERVATIONS OF THE UNITED STATES UNDER SECTION 131(h) OF TITLE 23, UNITED STATES CODE

(These are omitted)

NATIONAL STANDARDS FOR DIRECTIONAL AND OTHER OFFICIAL SIGNS AND NOTICES ALONG THE INTERSTATE AND FEDERAL-AID PRIMARY SYSTEM

The following standards shall apply to directional and other official signs and notices erected and maintained within 660 feet of the nearest edge of the right-of-way of the Interstate and Federal-aid primary system, and visible from the main traveled way of the system, in accordance with section 131(c), Title 23, U.S. Code. These standards do not apply to directional and other official signs erected on the highway right-of-way.

Nothing contained herein shall prohibit a State from establishing standards imposing stricter limitations with respect to directional and other official signs and notices along the Federal-aid highway systems than those set out below, nor shall anything contained herein be construed as requiring any State to pay for the erection and/or maintenance of a directional sign.

DEFINITIONS

Sign means an outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to inform, any part of the informative contents of which is visible from any place on the main traveled way of the Interstate or Federal-aid primary highway.

Traveled way means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Main traveled way means the through traffic lanes of the highway, exclusive of frontage roads, auxiliary lanes, and ramps.

Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

Directional and other official signs and notices shall include:

1. *Official signs and notices* means signs and notices erected and maintained by public officers or public agencies within their territorial jurisdiction and pursuant to and in accordance with direction or authorization contained in Federal or State law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by State law and erected by State or local governmental agencies or non-profit historical societies may be considered official signs.
2. *Public utility signs* mean warning signs, informational signs, notices, or markers which are customarily erected and maintained by publicly or privately owned public utilities, as essential to their operations.
3. *Service club and religious notices* mean signs and notices, whose erection is authorized by law, relating to meetings of non-profit service clubs or charitable associations, or religious services, which signs do not exceed four square feet in area.
4. *Directional signs* mean signs containing directional information about public places owned or operated by Federal, State, or local governments or their agencies, publicly or privately owned natural phenomena, historic, cultural, educational, and religious sites, and areas of natural scenic beauty or naturally suited for out-door recreation, deemed to be in the interest of the traveling public.

Law (State) means a State constitutional provision or statute, or an ordinance, rule, or regulation enacted or adopted by a State agency or political subdivision of a State or an official local agency pursuant to State constitution, statute, or ordinance.

GENERAL

The following signs are prohibited:

1. Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features of the landscape.
2. Signs which are structurally unsafe or in disrepair.
3. Signs located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic.

SIZE

1. No sign shall exceed the following limits:
   (a) Maximum area — 150 square feet; (b) maximum height — 15 feet; (c) maximum length — 20 feet.
2. All dimensions include border and trim, but exclude supports.
3. Double-faced back-to-back, or V-type signs shall be considered as two signs. Maximum size of signs shall apply to each face.

LIGHTING

Signs may be illuminated, subject to the following restrictions:

1. Signs which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights are prohibited, except those giving public service information such as time, date, temperature, weather, or similar information.
2. Signs which are not effectively shielded so as to prevent beams or rays of light from being directed at any portion of the traveled way of an Interstate or primary highway and which are of such intensity or brilliance as to cause glare or to impair the vision of the driver of any motor vehicle, or which otherwise interfere with any driver's operation of a motor vehicle are prohibited.
3. No sign shall be so illuminated as to interfere with the effectiveness of or obscure an official traffic sign, device, or signal.

DIRECTIONAL SIGNS

The following requirements apply only to directional signs as defined herein:

State Standards

Each State shall develop standards for directional signs, said standards to be subject to the approval of the Secretary. All directional signs erected subsequent to January 1, 1968, along the Interstate and Federal-aid primary system and within 660 feet thereof shall conform to the above State standards.

Message Content

The message on directional signs shall be limited to the identification of the attraction or activity and directional information useful to the traveler in locating the attraction, such as mileage, route numbers or exit numbers.

Location, spacing and number of directional signs

1. Each location of a directional sign must be approved by the State highway department.
2. No directional sign may be located within 2,000 feet of an interchange or intersection at grade or rest area along the Interstate System or other freeways (measured along the Interstate or freeway from the sign to the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way).
3. (a) No two directional signs facing the same direction of travel shall be spaced less than one mile apart.
   (b) Not more than three directional signs pertaining to the same activity and facing the same direction of travel may be erected on a single route or combination of routes approaching the activity.
   (c) Signs pertaining to one activity shall be limited to ten.

Selection methods and criteria

Activities or attractions eligible for directional signing shall be limited to the following: Natural wonders; scenic attractions; historical attractions; educational, cultural, scientific and religious institutions or activities; and outdoor recreational areas.

To be eligible, privately-owned attractions or activities must be nation-

ally or regionally known, and of outstanding interest to the traveling public.

Each State shall develop specific selection methods and criteria to be used in determining whether or not an activity qualifies for this type of signing. These are to be forwarded to the Secretary for approval prior to the State's permitting the erection of any such signs under the provisions of section 131(c), Title 23, United States Code, and these standards.

PROPOSED NATIONAL STANDARDS AND CRITERIA FOR OFFICIAL HIGHWAY SIGNS WITHIN INTERSTATE RIGHTS-OF-WAY GIVING SPECIFIC INFORMATION FOR THE TRAVELING PUBLIC*

PURPOSE

To establish standards for the erection within the right-of-way of signs on the Interstate highway system which will give the traveling public specific information as to gas, food or lodging available on the crossroad at or near the interchanges.

DEFINITIONS

Specific information panel is rectangular in shape consisting of: (a) the words GAS, FOOD or LODGING and directional information, and (b) one or more supplemental (individual business) signs mounted on the panel. This panel should be located in the same manner as other official traffic signs readable from the main traveled way.

Rest area information panel is rectangular in shape, erected in safety rest areas, for the display of motorist services information. This panel shall be located so as not to be readable from the main traveled way.

Supplemental (individual business) sign is a separately attached sign mounted on the specific information panel or rest area information panel to show the name and/or brand or trademark of the motorist services available on the crossroad at or near the interchange.

LOCATION

The specific information panels are designed for application at rural interchanges where a number of motorist services normally are not available.

A separate specific information panel may be provided on the interchange approach for each qualified type of motorist service.

The specific information panels may be erected in advance of the first advance guide sign for the approaching interchange. The panels should be erected one to two miles in advance of the first advance guide sign. No panel shall be closer than 1500 feet to any major guide signs, and there shall be at least an 800-foot spacing between the information panels. In the direction of traffic the successive panels shall be those for LODGING, FOOD, GAS, in that order.

The motorists services information, shown on the specific information panels, should be repeated on the interchange ramp where the service installations are not visible from the ramp terminal. The signs shall be the same

*These may be subject to change following further evaluation of several current demonstration projects.

in shape, color and message as those shown on the specific information panels, together with an arrow showing the directions for the different services and, where needed, the mileage to the service installation. This signing will not be necessary at double-exit interchanges. These sign legends or symbols shall be smaller than those shown on the specific information panels.

Rest area information panels for the next several interchanges should be located within safety rest areas. Rest area information panels should not be erected for interchanges located greater than 25 miles from the rest area. When motorist services information for an interchange is shown on a rest area information panel, no specific information panel shall be erected in advance of that interchange.

MINIMUM CRITERIA FOR DISPLAY OF SPECIFIC INFORMATION

The individual business installation whose name, symbol, or trademark appears on a supplemental sign, shall provide its services without regard to race, religion, color or national origin.

The maximum distance that the GAS, FOOD, or LODGING services can be located from the main traveled way to qualify for a supplemental sign shall be in accordance with State standards.

GAS and associated services to qualify for erection on a panel shall include:

(a) Vehicle services such as fuel, oil, lubrication, tire repair and water.

(b) Rest room facilities and drinking water.

(c) Continuous operation at least 16 hours per day.

(d) Telephone.

FOOD to qualify for erection on a panel shall include:

(a) Where required, licensing or approval by State or political subdivision.

(b) Continuous operation to serve 3 meals a day.

(c) Telephone.

LODGING to qualify for erection on a panel shall include:

(a) Where required, licensing or approval by State or political subdivision.

(b) Adequate sleeping accommodations.

(c) Telephone.

COMPOSITION

For each interchange approach, the GAS specific information panel shall be limited to six supplemental signs, the FOOD and the LODGING specific information panel shall be limited to four supplemental signs each.

SIZE

The supplemental signs displayed on the GAS information panel shall be contained within a 48″ wide and 36″ high rectangular background area. The supplemental signs on the FOOD and LODGING information panels shall be contained within an 84″ wide and a 36″ high rectangular background area.

For the single-exit interchange, the maximum size of the specific information panel shall be 18′ wide and 10′ high, including border; the minimum size

shall be 18′ wide and 6′ high, including border.

For double-exit interchanges, where the same type of motorist services are to be signed for each exit, the maximum size of the specific information panel shall be 18′ wide and 16′ high, including border; where a type of motorist service is to be signed for only one exit, the size shall be in accordance with the requirements for a single-exit interchange.

The supplemental signs to be mounted on the rest area information panels shall be contained within a 24″ by 24″ background area including border.

COLOR, REFLECTORIZATION AND ILLUMINATION

The background color of the specific information panel shall be blue with a white reflectorized border. The words GAS, FOOD and LODGING and exit direction messages shall be white reflectorized 10-inch capital letters mounted on the blue panel.

The supplemental sign color shall be a white message on a blue background, except that colors consistent with customary use should be used with nationally, regionally or locally known symbols or trademarks. The principal legend on the supplemental sign shall be at least 8 inches in height; except that where the symbol or trademark is used alone for the supplemental sign, any legend on the symbol shall be in proportion to the size of symbol, consistent with customary use. The supplemental signs, symbols or trademarks shall have a white border.

The specific information panel may be illuminated, but on any interchange approach all panels shall be consistent with the treatment for other guide signs for that approach.

APPENDIX C

COUNCIL OF STATE GOVERNMENTS MODEL LAW

AN ACT TO PROVIDE FOR THE DISPOSAL OF ABANDONED MOTOR VEHICLES AND FOR RELATED PURPOSES

SECTION 1. Definitions. As used in this Act:

1. "Police department" means the [state police or highway patrol agency] or any police department of a [county, city, town, etc.].
2. "Abandoned motor vehicle" means a motor vehicle that is [inoperable and] over [eight] years old and is left unattended on public property for more than [forty-eight] hours, or a motor vehicle that has remained illegally on public property for a period of more than [forty-eight] hours, or a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than [forty-eight] hours.
3. "Demolisher" means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck, or dismantle motor vehicles.

SECTION 2. Authority to Take Posession of Abandoned Motor Vehicles.

A police department may take into custody any motor vehicle found abandoned on public or private property. In such connection, a police department may employ its own personnel, equipment and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving and storing abandoned motor vehicles.

SECTION 3. Notification of Owner and Lien Holders.

(a) A police department which takes into custody an abandoned motor vehicle shall notify within [fifteen] days thereof, by registered mail, return receipt requested, the last known registered owner of the motor vehicle and all lien holders of record that the vehicle has been taken into custody. The notice shall describe the year, make, model and serial number of the abandoned motor vehicle; set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle within [three] weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lien holders of all right, title and interest in the vehicle and consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is impossible to determine with reasonable certainty the identity and addresses of all lien hold-

ers, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this Act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by registered mail and shall have the same contents required for a notice by registered mail.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to this Section.

SECTION 4. Auction of Abandoned Motor Vehicles.

If an abandoned motor vehicle has not been reclaimed as provided for in Section 3, the police department shall sell the abandoned motor vehicle at a public auction. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and shall be entitled to register the purchased vehicle and receive a certificate of title. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and, in such case no further titling of the vehicle shall be necessary. From the proceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred pursuant to Section 3 of this Act. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for [ninety] days, and then shall be deposited in a special [state fund] which shall remain available for the payment of auction, towing, preserving, storage and all notice and publication costs which result from placing other abandoned vehicles in custody, whenever the proceeds from a sale of such other abandoned motor vehicles are insufficient to meet these expenses and costs. Whenever the [chief state fiscal officer] finds that monies in the [state fund] are in excess of reserves likely to be needed for the purposes thereof, he may transfer the excess to the [general fund], but in such event claims against the [state fund], if the [state fund] is temporarily exhausted shall be met from the [general fund] to the limit of any transfers previously made thereto pursuant to this Section.

SECTION 5. Garagekeepers and Abandoned Motor Vehicles.

Any motor vehicle left for more than [ten] days in a garage operated for commercial purposes after notice by registered mail, return receipt requested, to the owner to pick up the vehicle, or for more than [ten] days after the period when, pursuant to contract, the vehicle was to remain on the premises, and any motor vehicle left for more than [ten] days in such garage by someone other than the registered owner or left by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, shall be deemed an abandoned vehicle, and shall be reported by the garagekeeper to the police department. Any garagekeeper who fails to report the possession of such vehicle within [ten] days after it becomes abandoned within the meaning of this Section shall no longer have any claim for servicing, storage, or repair of the vehicle. All abandoned vehicles left in garages may be taken into custody by the police department and sold in ac-

cordance with the procedures set forth in this Act unless the motor vehicle is reclaimed and the garagekeeper is paid. The proceeds of the sale shall be first applied to the garagekeeper's charges for servicing, storage, or repair, and any surplus proceeds shall be distributed in accordance with Section 4 of this Act. Except for the termination of claim for service, storage, or repair for failure to report an abandoned motor vehicle, nothing in this Section shall be construed to impair any lien of a garagekeeper under the laws of this State, or the right of a lien holder to foreclose. For the purposes of this Section "garagekeeper" means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair or maintenance of motor vehicles.

SECTION 6. Disposal to Demolishers.

(a) Any person, firm, corporation or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may apply to the police department of the jurisdiction in which the vehicle is situated for authority to sell, give away, or dispose of the vehicle to a demolisher.

(b) The application shall set out the name and address of the applicant, the year, make, model and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged therein are true and that no material fact has been withheld.

(c) If the police department finds that the application is executed in proper form, and shows that the motor vehicle has been abandoned upon the property of the applicant or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police department shall follow the notification procedures set forth in Section 3 of this Act.

(d) If any such abandoned motor vehicle is not reclaimed in accordance with Section 3, the police department shall give the applicant a certificate of authority to sell the motor vehicle to any demolisher for demolition, wrecking or dismantling. The demolisher shall accept such certificate in lieu of the certificate of title to the motor vehicle.

(e) Notwithstanding any other provisions of this Act, any person, firm, corporation, or unit of government upon whose property or whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost, or destroyed, may dispose of such motor vehicle to a demolisher without that title and without notification procedures of Section 3 of this Act if the motor vehicle is over [eight] years old and has no engine or is otherwise totally inoperable.

SECTION 7. Duties of Demolishers.

(a) Any demolisher who purchases or otherwise acquires a motor vehicle for purposes of wrecking, dismantling or demolition shall not be required to obtain a certificate of title for such motor vehicle in his own name. After

the motor vehicle has been demolished, processed, or changed so that it physically is no longer a motor vehicle, the demolisher shall surrender for cancellation the certificate of title or auction sales receipt. The [state motor vehicle agency] shall issue such forms, rules and regulations governing the surrender of auction sales receipts and certificates of title as are appropriate.

(b) A demolisher shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each such motor vehicle was purchased or received and the date when such purchases or receipts occurred. Such records shall be open for inspection by any police department at any time during normal business hours. Any record required by this Section shall be kept by the demolisher for at least [one] year after the transaction to which it applies.

SECTION 8. Effective Date.

APPENDIX D

OPINION OF THE ATTORNEY GENERAL OF MASSACHUSETTS RELATIVE TO EMINENT DOMAIN TAKINGS ADJACENT TO HIGHWAYS TO PRESERVE NATURAL BEAUTY

October 5, 1965

Francis W. Sargent, Commissioner
Department of Public Works
100 Nashua Street
Boston, Massachusetts

Re: Eminent Domain — Takings Adjacent to *Highways to Preserve Natural Beauty*

Dear Commissioner Sargent:

You have asked for my opinion on whether the Department of Public Works has the statutory and constitutional power to acquire by eminent domain land adjacent to highways for the purpose of preserving natural beauty and other aesthetic values in connection with the accelerated Federal Highway Program as set forth in United States Department of Commerce, Bureau of Public Roads, Policy and Procedure Memorandum 21-4.6, dated January 5, 1965.

Preliminary consideration of pertinent Federal law and procedures is necessary and appropriate.

Title 23 U.S. Code provides, *inter alia,* in §319:

> "The construction of highways by the States with funds apportioned in accordance with Section 104 of this title may include . . . the purchase of . . . adjacent strips of land of limited width and primary importance for the preservation of the natural beauty through which highways are constructed . . ."

Article 5 of said USBPR Policy and Procedure Memorandum 21-4.6, entitled "ELIGIBLE PROJECTS", provides, *inter alia:*

> "b. . . . Adjacent strips may involve any of the following, or similar characteristics:
>
> "(1) areas of woodland, wildwood, or groves of trees;
>
> "(2) attractive water features such as streams and lake shores, rivers and shorelines;
>
> "(3) mountains or similar vistas of obvious scenic quality;
>
> "(4) scenic strips to protect a scenic view or scenic vistas, involving mountains, water, vegetation, or the like;
>
> "(5) areas involving special topographic features such as rock out-crops, rock ledges, bluff faces, swamps, islands, or other unique formations."

Although the language of Title 23 USC §319 does not expressly authorize Federal participation in the cost of acquiring land by eminent domain for the preservation of natural beauty, it is my opinion that the word "purchase" as used in Section 319 includes acquisition by eminent domain. I adopt the following reasoning:

> "When used in a statute, the word 'purchase' is frequently held to include any method of acquisition other than by descent. 7 *Words and Phrases,* 5853. To construe the word here to mean only acquisition by buying, we must assume that Congress had in mind the method of acquisition rather than the general purpose to acquire. The mere use of the word 'purchase' . . . is not to my mind a sufficient reason for such asumption. If, as we must, we give the members of Congress credit for a reasonable knowledge of human nature, they must be assumed to have known that to restrict acquirement to voluntary sales by the owners would most probably defeat the chief purpose for which the appropriation was made . . . (T)he first section of [Title 40 U.S.C., §257] makes further discussion unnecessary. The very purpose of that section was to authorize condemnation whenever, theretofore or thereafter, an act of Congress authorized land to be 'procured' for public use." *United States v. Beaty,* (D.C.W.D. Va., 1912) 198 F. 284, 286, 287, rev'd. on other grounds 203 F. 620, cert. den. 232 U.S. 463.

It is my opinion that the Department of Public Works does not have statutory authority to take by eminent domain strips of property adjacent to highways solely for the preservation of natural beauty. Section 7 of Chapter 81 of the General Laws provides *inter alia:*

> "If it is necessary to acquire land for the purposes of a state highway. . . . the department may take the same by eminent domain . . ."

The law governing whether acquisition of specific land is "necessary . . . for the purposes of a state highway" is well established.

> "When private property is taken in the exercise of the right of eminent domain, the taking must be limited to the reasonable necessities of the case, so far as the owners of the property taken are concerned." *Rockport v. Webster,* 174 Mass. 385, 390. *Newton v. Newton,* 188 Mass. 226, 228.

A determination by the duly authorized taking agency that it is necessary to take certain property is conclusive. *Lynch v. Forbes,* 161 Mass. 302, 308, 309.

> "The necessity for appropriating property for public use is not a judicial or quasi-judicial question but is a legislative one." *Hayeck v. Metropolitan District Commission.* 335 Mass. 372, 375.
>
> ". . . the decision of [the] condemnor is final as long as it acts reasonably and in good faith. If the land is of some use to it in carrying out its public object, the degree of necessity is its own affair." 1 *Nichols on Eminent Domain* (3d Ed.), §4.11 [3], p. 570, 572.

Broad discretion is delegated to the Department of Public Works by §7 of Chapter 81 (G.L.) provided land acquisition is for highway purposes. Takings of strips of land adjacent to highways primarily for the preservation of natural beauty is not authorized by §7, Chapter 81 (G.L.). Acquisition must be for a primary purpose that relates directly to the laying out, con-

struction, maintenance or operation of state highways. If the primary purpose of the legislation is a permissible public purpose, then aesthetic considerations are also permissible. *Welch v. Swasey,* 193 Mass. 364, 374, 375, aff'd. 214 U.S. 91.

For example, takings of land by eminent domain for wide median strips to increase the safety of travel are considered "necessary . . . for the purposes of a state highway". The fact that such strips may also preserve natural beauty is incidental and not germane to the validity of their acquisition.

However, it is my opinion that it is not "necessary . . . for the purposes of a state highway" (§7, Chapter 81 G.L.) to take strips of land adjacent to highways solely for the preservation of natural beauty of areas through which highways may pass.

Interpretation of the meaning of the language of §7, Chapter 81 (G.L.) requires consideration of §13A of said Chapter 81, which provides, *inter alia:*

> "The department may accept in behalf of the commonwealth from owners of lands included in a strip one hundred feet deep bordering on a state highway voluntary gifts . . . of easements in such lands, giving the commonwealth the right to enter thereon . . . for the purpose of landscaping such land . . . The department may improve lands in which such easements are granted, so as to carry out a comprehensive plan of highway beautification, artistic landscaping and scenic development, to the extent that appropriations are available therefor.
>
> "Such easements shall be accepted only on the condition that such land shall remain fully subject to local taxation to the owners of the fee."

Said section 13A explicitly authorizes a "comprehensive plan of highway beautification . . . and scenic development" of strips of land bordering state highways. However, it authorizes only the acceptance of gifts of easements for this purpose. It does not expressly authorize takings by eminent domain. The legal maxim *expressio unius est exclusio alterius* must apply. The express mention of one thing implies the exclusion of another. If the Legislature intended takings by eminent domain to accomplish the "comprehensive plan of highway beautification", it must explicitly delegate that power for that purpose. The concern for frugality evident throughout section 13A clearly indicates that the power to take by eminent domain was intentionally omitted therefrom.

The rules governing statutory construction further support the above interpretation of sections 7 and 13A. Those sections must be read together so as to make Chapter 81 a consistent and harmonious whole. See *Real Properties, Inc. v. Board of Appeals of Boston.* 311 Mass. 430. Section 7, most recently amended in 1931, relates generally to the acquisition of interests in land for the purposes of state highways. Section 13A, enacted in 1936, relates particularly to acquisition of interests in land to accomplish a comprehensive plan of highway landscaping and beautification. It is a canon of statutory construction that a particular provision prevails over a general provision. That rule applies to Chapter 81 with greater force because section 13A, the particular provision, is later in time of enactment. It should also

be noted that statutory provisions such as section 7, delegating the power of eminent domain, must be construed with considerable strictness. *Holliston v. Holliston Water Co.*, 306 Mass. 17, 19.

The second part of your question is concerned with the existence of constitutional authority for takings by eminent domain of strips of land bordering state highways for the preservation of natural beauty.

It is my opinion that the General Court may constitutionally enact statute authorizing the taking of strips of property adjacent to highways for the preservation of natural beauty.

The constitutions of both the United States of America and the Commonwealth restrict the taking of private property by eminent domain by the Commonwealth to public uses or purposes. U.S. Constitution, Amendment 14, Commonwealth of Massachusetts Constitution, Article 10. *Wright v. Walcott*, 238 Mass. 432, 434, 435.

It is my opinion that the taking of strips of property on each side of highways to be used not for travel, but for the preservation of natural beauty would constitute takings for a valid public use or purpose, conserving and developing the natural resources of the Commonwealth.

Article 49 of the Amendments of the Constitution of Massachusetts provides:

> "The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor."

The taking contemplated by the USBPR Policy and Procedure Memorandum 21-4.6 of January 5, 1965 of "areas of woodland, wildwood, or groves of trees," "attractive water features such as streams and lake shores, rivers and shorelines", "rock out-crops, rock ledges", etc. for the "preservation of . . . natural beauty" would promote the "conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the Commonwealth". Such takings would be for "public uses" within Article 49 of the Constitution of the Commonwealth.

It is also my opinion that such takings would be for a public use or purpose within the meaning of the Constitution of the United States. The Supreme Judicial Court has stated:

> "The people of this Commonwealth have declared by the Forty-ninth Amendment that the development of water power such as is authorized by the bill is a public use. The tendency of recent decisions of the Supreme Court of the United States has been to accept as true in its application to local conditions a constitutional declaration of a State to the effect that a given expropriation of private property is to a public use. [citing cases]." *Opinion of the Justices*, 237 Mass. 598, 612.

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vent the enactment of a statute under the authority of Article 49 of the Amendments to the Constitution of the Commonwealth because of some relationship to the Massachusetts highway system.

Very truly yours,

EDWARD W. BROOKE, Attorney General